



SIR T. MUTHUSWAMI AYYAR

INDIAN JUDGES

BIOGRAPHICAL & CRITICAL SKETCHES
WITH PORTRAITS



THE HON. SIR BROJENDRA MITTER, K.C.S.I.
Law Member of the Government of India



सत्यमेव जयते

RS. THREE

G. A. NATESAN & CO.
MADRAS



सत्यमेव जयते

CONTENTS

	PAGE
Sir T. Muthusami Ayyar	1
Dwarkanath Mitter	33
Nanabhai Haridas	49
Mahadev Govind Ranade	65
Sir Subramania Iyer	97
Sir V. Bhashyam Iyengar	119
Badruddin Tyabji	145
Sir Gooroodass Banerjee	161
Sir Pramoda Charan Banerji	187
Sarada Charan Mitra	199
The Right Hon. Syed Amir Ali	219
Kashinath Trimbak Telang	254
Syed Mahmood	305
Sir Romesh Chunder Mitter	324
Sir Asutosh Mukerjea	338 a
Sir N. G. Chandavarkar	339
Sir C. Sankaran Nair	377
V. Krishnaswami Iyer	411
Shah Din	446
Sir Abdur Rahim	457
Sir Shadi Lal	489



सत्यमेव जयते

greatest achievement has naturally been in the realm of the personal laws of the Indians. They have illumined the obscure, elucidated cardinal principles reconciled differences and helped in the progressive growth of ancient laws through enlightened interpretation. At a time when few of the old texts were available to the uninitiated through translations, they explored original sources and brought to light the structure and organization of the different systems of law which governed the divers communities of India. Their service to jurisprudence has been of great value. The Judges whose memoirs are embodied in this volume, are some of the most distinguished in the roll of great Indian lawyers and Judges. I hope the beginning made in this volume will inspire a future Indian Campbell to undertake more ambitious annals.

New Delhi,
April 3rd, 1932.

BROJENDRA MITTER

সপ্রাণী ক্ষমতা

FOREWORD

SECTION 101 of the Government of India Act provides for the constitution of the High Courts in British India. The four classes of Judges are, shortly speaking : (1) Barristers, (2) Members of the Indian Civil Service, (3) Persons having held judicial office, and (4) Pleaders. This classification was first made in the Indian High Courts Act, 1861 (24 and 25 Vic., C. 104). Sir Charles Wood, Secretary of State for India, in his Despatch dated the 14th May 1862, which accompanied the Letters Patent for the High Court of Calcutta, said : "The Crown by its Letters Patent has sanctioned the establishment of a tribunal as the Chief Court of Justice in India, which in the trained learning of the Judges selected from the Bar, and in the knowledge of the language, feelings and habits of that country possessed by other members of the Court, combines the most material elements of success."

Since 1862, Judges of Indian race have been appointed to all the High Courts in India, and they form a glorious band who have fully justified the anticipation of Sir Charles Wood. By learning, knowledge of the feelings and habits of the people, independence and integrity, Indian Judges have maintained the highest traditions of justice. Their

PUBLISHERS' NOTE

THIS is a collection of sketches of famous Indian Judges who have adorned our courts during the last half a century. Indians have distinguished themselves in various professions under British rule but nowhere have their talents risen to such heights as in our law courts, where it is indisputably recognised that they have held their own with singular distinction on the Bench as in the Bar. The sketches of Indian Judges are designed to present not only a record of individual achievements in law, but also to throw light on the evolution of Hindu and Muslim Law under British administration, and with them the growth of social and political institutions in the country. The writers have not confined themselves merely to a record of legal opinions and achievements of the Judges, but attention is bestowed on their other activities as well, such as the many-sided activities of Sir Asutosh Mukerjee, the educational activities of Justice Sir Gurudas Banerjee, the reform activities of Justice Ranade, the political activities of Sir Subramania Aiyar and the pan-Islamic activities of the Rt. Hon. Syed Amir Ali. In all the sketches while special attention is paid to a review of their legal contributions, they are duly related to their activities as citizens and patriots. A study of the lives of Indian

Judges must be particularly welcome to lawyers who aspire for eminence in their profession, as in these pages they come in contact with the story of the trials and struggles and the final triumphs of men who have risen to fame from very modest beginnings. It cannot fail to interest the layman as well by the many inspiring examples of conquest by steady and patient work.

The Publishers.



SIR T. MUTHUSAMI AYYAR

INTRODUCTION

SIR T. Muthusami Ayyar is appropriately the first of the Indian judges. He was at once the pattern and exemplar of the highest officer of the Indian judiciary. As the first Indian judge of the High Court of Madras it fell to him to give decisions and create precedents which have been upheld by successive leaders of the Bench and Bar, all over the country.

How often has the authority of his great name been invoked in fortifying decisions in our courts? And Sir Muthusami Ayyar's judgments range over the whole range of our religion and our social life. For, in the piquant words of Mr. Eardley Norton: "Muthusami was a born Judge. * * * He carried his conscience into Court and was visibly influenced by it. An erudite Hindu lawyer, there was no field of legal literature in which he was not expert and at home."

But Sir T. Muthusami Ayyar, great as he was as a Judge, was even greater as a man. Indeed in South India, his name has become a household word. Parents tell their children stories of Sir Muthusami's early struggles and final triumphs; of his rise from abject poverty and obscurity to affluence and great renown; of the simplicity of his life and the truthfulness of his character, his diligence and integrity, and above all his piety and devotion to duty. He is cited as the supreme instance of the truth of the poet's dictum: slow rises worth by poverty depressed. Indeed Sir Muthusami

typified in his own life and character the lofty ideal of duty which he himself described thus on a memorable occasion :

In its widest acceptation, duty includes every quality and virtue which men of culture ought to cultivate and cherish, and strong sense of duty is the keynote of a high moral nature. Let neither insidious flattery nor blind censure, the contumely and ridicule of interested prejudice or vanity win you aside, even when some personal risk stares you in the face, from the straight path of duty. Remember also that the life of a man of culture is one of trials and that he needs always to maintain a high sense of duty, as well in the hour of difficulty as in that of success and that in the long run devotion to duty seldom fails to meet with success and even reward in life.

HIS LIFE

He was born at Uchuvadi, a village two miles from Tiruvalur, on 28th January, 1832. His father was a poor Brahman by name Venkatarama Sastriar. The latter's vision was defective and it was his wife that by her thrift and intelligence kept the family in a respectable though indigent condition. Both Muthusami Ayyar and his elder Vaidyanathasami Ayyar had to take up the burden of earning their livelihood after picking up a smattering knowledge of the Tamil language. Muthusami Ayyar became an apprentice to a village karnam (accountant) and got as his salary *one rupee* after one month's work. He continued as assistant village accountant till his twelfth year. Then one day Muthusami Naik, the Tahsildar of Tiruvalur, received a report of some breaches and sent for a clerk of the Taluk office to prepare a draft order giving instructions to deal with the emergency. No clerk was at that moment in office ; but Muthusami Ayyar who was present there went to the Tahsildar, attended to the matter and prepared a valuable draft full of wise suggestions and directions which pleased the Tahsildar immensely. On another occasion he stated accurately from memory the balance of the kist

due by a very rich *Mirasdar* of the place. He had a great desire to study the English language. Muthusami Naik helped him to realise this ambition of his youthful life. By his kindness and munificence Muthusami Ayyar was enabled to study in the Mission school at Negapatam. He helped him afterwards to go to Madras to complete his education. Muthusami Ayyar went to Madras with letters of introduction to Madhava Rao, afterwards Raja Sir T. Madhava Rao and to Sir Henry Montgomery. He joined the High School which has since blossomed into the Presidency College. By his extraordinary industry and intelligence he won golden opinions from all his teachers. The old High School was then managed by a Council of Education composed of such great and good men as Sir Alexander Arbuthnot, Mr. William Holloway, and Sir Henry Moatgomery and staffed by famous educationists like Mr. Powell. Muthusami Ayyar completed his High school course there. In 1854 the Council of Education awarded a prize of Rs. 500 for the best essay in English. Muthusami Ayyar won that prize. His educational career was thus one of exceptional brilliance. His favourite author was Oliver Goldsmith and it is said that he read the *Vicar of Wakefield* for the fifty-first time one year before he died.

As a proficient of the High School, he was eligible to take up public service and he was fitted, by nature and education, to fill with distinction any office of public trust and responsibility bestowed upon him. In his twenty-third year he was appointed as a tutor in the High School on a salary of Rs. 60 per mensem by Mr. Powell. Mr. Powell was so struck with his remarkable abilities that he even proposed that Muthusami Ayyar should go to England to study and compete for the I.C.S. examination.

But Muthusami Ayyar was averse to undertaking a long sea voyage and had further to maintain his family, and hence could not accept the proposal. Muthusami Ayyar afterwards gave up his temporary appointment as a lecturer in the High School and entered public service as a record-keeper in the Tanjore Collectorate through the kindness of Sir Henry Montgomery who was then a Member of the Governor's Executive Council. Then Sir Alexander Arbuthnot, the Director of Public Instruction, appointed him as a Deputy Inspector of Schools on a monthly salary of Rs. 150. He referred to his work as Inspector thus when he presided over the prize distribution at the Mayavaram Municipal High School in 1892 :—

I take special interest in this institution for it is the result of progressive development extending over nearly twenty years, and is in one sense the growth of the Taluk school which about 35 years ago I, in the capacity of a Deputy Inspector of Schools, assisted in organising and establishing. At even so early a date there was a keen demand for English education and it is gratifying to find that it has since grown and is growing.

After working with signal success for fifteen months as an Inspector of Schools, he was appointed by Mr. Holloway as a District Munsiff in the third grade. He had in the meanwhile passed the Pleadership Test conducted by the District Judge in Tanjore in 1853. He was posted to the Court at Tranquebar. In a few months, however, he was appointed as an Inam Deputy Collector in which capacity he served with marked ability for three years. He was invested with magisterial power afterwards and posted to the North Arcot district and then to Tanjore City. While he was Deputy Magistrate at Tanjore, a rich sowcar was tried before him for cheating. Mr. John Bruce Norton appeared in that case and conducted it. He was so much struck with Muthusami Ayyar's abilities that after his return to Madras he told Mr. Holloway and Sir

Alexander Arbuthnot that "judicial talent of a very high order was wasted in the Revenue Department." At that time the Sub-Judgeship of South Canara fell vacant. Three names were asked by the Government to be suggested for the vacancy. Mr. Holloway suggested in his demi-official note Muthusami Ayyar's name thrice instead of suggesting three different names. Muthusami Ayyar was then appointed Sub-Judge—Principal Sadar Amin as he was then called—at Mangalore on 9th July 1865. His judicial temper and integrity and his industry and intellectual power enabled him to win great distinction in this new and honourable sphere of public work.

In July 1868 he was appointed as a Police Magistrate at Madras. The following incident shows how impartially and fearlessly he administered justice in that capacity :—

When he was Police Magistrate a native who had been thrashed by an European, a High Court Judge, for alleged trespass into the latter's premises applied for summons against that official for assault. Mr. Muthusami Ayyar did not resort to the temporising procedure of issuing a notice to show cause, as it is called; but immediately issued the summons asked for. His senior Magistrate later on proposed at the trial not to insist on the appearance of the High Court Judge. But this Mr. Muthusami Ayyar would not accede to. The result was that the High Court Judge had to appear and was fined Rs. 3 for a breach of the law which he had to administer.

While he was a Presidency Police Magistrate he studied law and passed the B. L. Examination in the first class. Sir V. Bhashyam Ayyangar passed the examination in the same year and headed the list. Mr. Muthusami Ayyar was then appointed as a Small Cause Judge at Madras. The Government then proposed to appoint him as a District and Session Judge, but the clamour of the bureaucracy was so great that that proposal was dropped. While he was a Small Cause Judge, he was instructed in German by Mr. Justice Holloway which enabled him to

study German law books in the original. The following anecdote is important and noteworthy as showing his sterling nature as a man and as a judge :—

When Sir T. Muthusami Ayyar was a Judge of the Small Causes he had to try a case in which a man whom he had known in his early days was sued for a debt of about Rs. 200. Before the hearing of the case the defendant managed on the score of his former friendship to obtain audience of the Judge and, taking advantage of the occasion, poured into his ear his own version of the case. At the trial the case for the plaintiff was proved and a decree passed against the defendant. Later on it became necessary to apply for execution. Mr. Muthusami Ayyar issued a warrant but at the same time handed the bailiff a cheque for a sum that would satisfy the decree. The bailiff, however, was directed to enforce the warrant and arrest the man before satisfying the decree. This was accordingly done and Mr. Muthusami Ayyar told the man that he had paid the debt for old acquaintance sake and because of the man's poverty, and not on account of his conduct at the trial which was most reprehensible.

In 1877 he attended the Delhi Durbar which was held when Her Majesty Queen Victoria assumed the title of the Empress of India. He paid a visit to Sir Syed Ahmed during this trip. It is narrated that he was so simple and unostentatious that the Nawab's retainers let him wait in the compound till the Nawab's customary hour of reception came. The Nawab when he came to know this expressed deep regret for the courtesy shown by his retainers. On 1st January 1878 the distinction of the Companion of the Indian Empire was conferred on him in recognition of his great qualities and eminent services. The then Governor of Madras spoke thus while investing him with the Order at a public Durbar :—

You belong to a branch of the service, the Judicial branch, of the highest importance to the well-being of the Empire. There is no branch of the service on whose efficiency, on whose integrity, and on whose ability and calm judgment, the liberty of the subject so entirely depends as upon the Judicature. I have great satisfaction in observing that you have distinguished yourself in this branch and have been called forward to occupy a high and prominent place among the Judges of this land and it is with very great

pleasure that it falls on me to announce to you that it has been Her Majesty's pleasure to select you for this favour which I trust you may long enjoy.

On 17th July, 1878, he was appointed as a Sub-pretor Judge of the Madras High Court after a brief term of office as Small Cause Judge at Madura from July 1877 to April 1878. He was the first Indian to have this unique honour in the Madras Presidency and his appointment was universally acclaimed. We shall refer later on to the great features of his judicial work. His clear grasp of facts, his varied and wide experience of all branches of life and administration, his wonderful industry and memory, his remarkable store of legal learning and acumen based on a masterly grasp of the principles of common law and statute law, his intimate knowledge of Indian customs and habits, and his admirable power and perspicacity of expression are abundantly clear from his luminous judgments. His judicial independence and integrity are worthy of our unstinted homage and admiration. His lofty conception of the duty and function of a judge was thus eloquently stated by him in his thoughtful Address on the occasion of the Convocation of the Madras University in 1882. He said then:

The Court of Justice is a sacred temple; the judges presiding over it are, though men, the humble instruments in the interests of truth, and those who enter this holy edifice with unholy thought, or desecrate it with unworthy actions, are traitors to their God and to their country. Those of you who may rise to the Bench should recollect that the power you may be called on to exercise in the name of your sovereign is according to one of your ancestors a Power Divine.

In July 1891 he was appointed to act as Chief Justice when Sir Arthur Collins took leave. In 1892 the honour of knighthood was conferred on him. Sir T. Muthusami Ayyar continued to perform his great duties in his usual thorough and conscientious way.

He fell ill in November 1894 and then recovered in December to some extent. But his health declined again rapidly and he passed away on 25th January 1895. His numerous admirers subscribed largely to testify to the universal regard entertained for him by all persons in the land and the memorial took the shape of the fine statue which now adorns the High Court over which he presided with such distinction. As Mr. Norton put it felicitously :

In the now High Court, at the broad junction of four passages, his marble likeness on a marble chair, wisdom on his front and integrity in every feature, Muthusami Ayyar sits pointing the way to the younger generation of Indian lawyers.

The Government of Madras expressed their appreciation of his great services to the public and the Government in the *Fort St. George Gazette* of 30th January 1885 :

The Right Honourable the Governor-in-Council has received with profound regret intelligence of the death, on the 25th instant, of the Honourable Justice Sir T. Muthusami Ayyar, K.T., C.I.E. A man of blameless life and a Judge of conspicuous learning, insight and impartiality, his death will long be lamented and his memory honored alike by Government and by all classes of the population of the Presidency of Fort St. George.

SIR T. MUTHUSAMI AYYAR THE MAN

He had a gentle and affable disposition and a simple and unostentatious nature. He was a great and noble embodiment of plain living and high thinking. He had not the least element of official or intellectual pride and was full of winning and attractive modesty. As Mr. Eardley Norton said of him, "he was too great to be vain," and he was full of courtesy not because courtesy was expedient but because "courtesy was an inalienable portion of himself". He was fast in his friendships and full of warm domestic affection. The following is a vivid picture of Sir T. Muthusami Ayyar and his characteristics from the versatile pen of Mr. Eardley Norton :—

I have touched upon Muthusami Ayyar's modesty. Nowhere did he display this more markedly than in his dress. He always walked into court bare-footed. He always sat without anything to cover his feet except the diaphanous fold of his white muslin cloth. Under his silk gown he donned, it is true, a black alpaca coat; but on his head shone all the glory of a goldlaced turban, accentuating the circular Smartha wafer which reposed between his eyebrows. No collar disfigured his neck. Round his ebony throat glistened the folds of a much-ejecting white tie, which towards the close of the day, after the heat of a more than usually knotty legal argument by slow degrees worked on of its end upwards and behind one of his ears. Muthusami would meantime sit with one eye shut, his head askew, with the feathered tips of his quill pen between his lips, smiling, cogitating, watching, waiting for his spring, while as his brain closed upon, grasped and strangled some audacious proposition of law with regard to the position of Bhandus, the legal status of a sister's son, or the exact inheritable virtues of a Dwyamishyana, his naked toes would play with fierce energy below, clutching, unclutching themselves as though they were seeking for the antagonist's throat, an index and a reflex of the intellectual spasms through which their owner was passing higher up. I used to watch those convulsions, I remember, with anxious tread, awaiting the time for my execution. When the great toe of the Judge's right foot leaned over and seized the toe adjacent to it we all knew that further argument was over and the case lost. The Judge had made up his mind. There was nothing left to do or to ask for.....not even costs.

His perfect gentlemanliness and courtesy and goodness were exhibited in relation to all persons irrespective of their position or power. To his colleagues he showed the ideal combination of respectfulness and self-respect. He used to convey gentle hints to them in regard to the proper inferences of fact and propositions of law in the cases that came up for decision. Indeed, as Mr. Eardley Norton said of him he was "used as the break-horse of the Bench. Each new judicial colt was harnessed to him and he pulled the neophyte round dangerous corners, forced him to trot instead of gallop in the straight and never knew he was shaping all the while the lives of future knights." Sir P. P. Hutchins said of him :—

Of all my colleagues I preferred sitting with Muthusami. He was very patient, and others might even have thought him slow

but I know that if I should seem inclined to lay down a doubtful proposition, or to dismiss as untenable an argument which may have a good foundation, I should be stopped by a hint or suggestion from Muthusami delivered so delicately that none else would have noticed it, but quite enough for one who recognised, as I did, both his gentle and unassuming disposition and the profound learning which lay behind it.

His general goodness and mercifulness were never-failing elements of his nature and spread an atmosphere of love and peace about him. It is a well-known fact that he was seldom inclined to award or confirm the penalty of death in criminal cases.

SIR T. MUTHUSAMI AYYAR AS JUDGE

His eminence as a judge was acknowledged on all hands and was the theme of universal praise. Before we state in what directions he developed the law of the land, we shall mention instances of the universal esteem in which he was held as an administrator of justice. Mr. Whitely Stokes in his general introduction to the Anglo-Indian Codes stated :

Of these judgments, none can be read with more pleasure and few with more profit than those of the Hindu Muthusami Ayyar and the Mahomedan Sayyed Mahmood. For the subtle races that produce such lawyers no legal doctrine can be too refined, no legal machinery can be too elaborate.

Sir P. P. Hutchins said of him :—

He was eminently a cautious and safe Judge, but his reported judgments show that on occasions he could lay down large and broad propositions in clear, illuminating language. Naturally his especial value to the Court lay in his familiar knowledge of Hindu law and customs ; but he was thoroughly imbued with the principle of general jurisprudence.

The *Madras Law Journal* observed :—

Precedent and authority always commanded respect from him but not a blind respect. He had an excellent mastery of legal principles and he invariably tried to rest his legal opinions upon the fundamental principles of law. He was gifted with a remarkable memory and remarkable powers of analysis and exposition and was imbued with a passionate love of method.

Certain special and excellent judicial traits of Sir T. Muthusami Ayyar deserve prominent notice. He used to write separate judgments when he differed from his colleague or when the importance of the case required a separate pronouncement at his hands. In important cases wherein historical prospects of institutions or customs or usages were necessary, he used to take great pains and sum up their growth and development in a masterly way. (see I. L. R. 10 Madras 375; 24 Madras 613) His love of truth and justice for themselves and not for any other considerations is clear from his readiness to change his views if he felt that they needed revision (see I. L. R. 10 Madras 288; 12 Madras 111). He stated often that the reason of the law should always be borne in mind so that the barren pursuit of mere forms of law may not lead us into abysses of injustice. When presiding over a meeting of the Maine Historical Society he said :

It is not enough to know a rule of law—and yet many of our graduates who have committed to memory several rules of law, think that thereby they become lawyers? Does not every one see that they are not lawyers? What is necessary is that they should not only know the rule of law, but the reason on which the rule is based. He who does not know the reason of law does not know law.

In his excellent Convocation Address he said in words admirably revealing his methods and ideals of legal training :

You should remember, if you desire to rise to professional eminence, that law is both a science and an art, and that your success, whether at the bar or on the bench, will depend on the clearness with which you understand the principles of the science, and on the readiness with which you will pass through a complicated mass of facts in the midst of animated and often eloquent addresses, taking in as it were by intuition each fact, referring it to its appropriate principle, and estimating its legal value within a given time. The study of law, as has been well said, is,

in its higher sense, the study of the philosophy of social life. The art you have to practise is one of the noblest; its object is the protection of human interests in all the relations of life, and the methods by which rules of decision are deduced must satisfy at once the requirements of legal science and of substantial justice.... You should never be hasty or impulsive, and thereby shut out even the faintest ray of light from forensic discussion. You should never heed any appeal to your passion or frailty, and never allow your attention to stray from the legal points of a case either amidst violent declamation or pathetic appeals, and always see before you pronounce your decision that the responsibility rests not with you individually but either with the law-giver or with the Science of Jurisprudence.

In Court he used to adopt the Socratic method when dealing with counsel and used to ply them with questions to make the points of contention and all their aspects quite clear to them and to him. Mr. Eardley Norton has thus admirably summed up his great judicial qualities generally :

He never allowed himself to be fascinated or misled by the temptation of reported cases before which lesser minds fall and worship in a spirit of idolatrous and debasing superstition..... To be a peripatetic Digest of Case Law has its merits. But so has the capacity to swallow a sword, or to put three peas under a thimble, or to trim a woman's hat, or to cook a savoury omelette. But Muthusami Ayyar could do more than bandy, without reference to a report, decided cases with loud-mouthed pleaders in court. He understood them. But he earned greater gifts than these. He disconnected himself without an effort from the vulgar temptation to be swayed by the personality of the advocate who addressed him. He believed in an argument, if it was sound, quite as much when it was advanced by some industrious, if bashful, junior, as when it was emphasised by a learned gentleman whose inherited surname had been lengthened out of all proportion, and not infrequently out of all desert, by the addition of affixes and suffixes as tokens of an official generosity more abundant than discerning. Muthusami Ayyar was a great Judge because he was a just Judge.

HIS CONTRIBUTION TO HINDU LAW

In regard to judicial social legislation under the guise of declaring the law he held very decided views. Sir Arthur Collins said of him :

On Hindu Law, perhaps he was the greatest authority in this country, sound, good, and never trying to break down old customs, never afraid of saying that which he believed to be true, even if he had to differ from some in cases that were decided.

Sir T. Muthusami Ayyar said in I.L.R., 11 Madras 53

It is desirable that in such matters there should be no divergence between the custom obtaining in the country and the law laid down by Courts of Justice.

He said in I. L. R. 13 Madras 301 to 305 :—

The District Munsiff apparently confounds the functions of the Judiciary with those of the reformer. In administering the Hindu Law the former has only to see what is the Hindu Law as received and practised by the Hindu community in general with the conviction that it is law, and to declare and enforce it when it is ascertained. It is not for him to go beyond, to resolve the Hindu Law as received by the people into its historical factors, to see how far its historical development has diverged from the logical or the philosophical development in the light of modern civilisation, and to reconstruct a system of Hindu Law which the people ought to have received and followed as consistent with the Shastras. It is not permitted to the judiciary to push the disquisition beyond those legitimate limits, to treat the several law-sources as independent factors which he is at liberty to manipulate at his pleasure and by a process of reasoning to disintegrate the law as received and practised by the people and to build up a fresh system of Hindu Law, which though obsolete is, in his opinion, more in accordance either with the Vedas or Smrithis than the usage adopted by the people as founded upon them. It must be always remembered that the Hindu Law which the courts are bound to administer is the law as received by the Hindu community and not as it stood either in the Vedic or or Smritic period of their history, and that any other conception of Hindu Law to be administered by the Courts is neither judicial nor rational.

We may refer here to a few of his judicial pronouncements on matters of general public interest. Chief Justice Turner and he laid down in I. L. R. 2 Madras 141 and in 5 Madras 304 in clear and forcible language the principles of law governing the right of procession and the right of public worship without disturbance by processions. The same learned Judge said in I. L. R. 7 Madras 49 :—

Except when danger to public health is occasioned, the conveyance of a corpse along a highway is not an unlawful use of the highway. If such danger arises as for instance when a person has died of a contagious disorder, a Magistrate may, under another provision of the Code, properly direct that the corpse be conveyed to cremation or sepulture by such a route as will expose the public to the least danger, and, when the conveyance of corpses by a

particular route is unnecessary and is repugnant to the feelings of the inhabitants, a Magistrate may properly exercise his influence to induce the persons concerned to abandon that route.

In regard to the law of landlord and tenant, he laid down various important and beneficent rules. He held in I. L. R. 4 Madras 74 that *Kudivaram* (tenant-right) does not necessarily vest in a *Mittadar* as such so as to entitle him to eject the ryots on his *Mittu* on notice as tenants from year to year. He held further that it was incumbent on *Mittadar* to show that the *Kudivaram* as well as the *Melvaram* right once vested in him, and that when this is done, he is entitled to treat the tenancy as one from year to year, determinable on proper notice.

It will be impossible to review here his contribution to the development of Hindu Law of which he was such an acknowledged master. We cannot do more than refer to a few decisions of more than general interest. In I. L. R. 8 Madras 89 he held that according to the Hindu Law which obtains in the Madras Presidency the right of a son in the womb to ancestral property cannot be defeated by a will or gift. In I. L. R. 8 Madras 94 he held that the rate of maintenance awarded by a decree cannot be reduced if the estate has been reduced by the voluntary acts of the persons liable for the maintenance decreed. In I. L. R. 8 Madras 236 he held that according to Hindu Law, a son is bound to support his aged mother whether or not he has property inherited from his father. In I. L. R. 9 Madras 45 F. F. he held that in Southern India the custom which exists among Brahmins of adopting a sister's or a daughter's son is valid. In I. L. R. 9 Madras 148 F. B. he held that according to the custom obtaining among the Brahmins in Southern India the adoption of a boy of the same gotra after the Upanayanam ceremony has been performed

is valid. In I. L. R. 11 Madras 5 F. B. he held that the ceremony of *Datta Homam* is not essential to a valid adoption among Brahmans in Southern India, when the adoptive father and son belong to the same *gotra*. In I. L. R. 11 Madras 43 and 18 Madras 53 he held that the adoption of an only son is not invalid. In I. L. R. 13 Madras 128 he held that adoption after marriage was invalid among Brahmans. In I. L. R. 11 Madras 293 he dealt with the question of the right of a Brahman who has married a widow to enter a temple for purposes of worship.

We shall refer here to a few other decisions of his bearing on miscellaneous topics of general interest. In I. L. R. 5 Madras 273 he held that the acts of State of which Courts are debarred from taking cognisance are acts done in the exercise of sovereign powers which do not profess to be justified by Municipal law and that where an act complained of as professedly done under the sanction of Municipal law and in the exercise of powers conferred by that law, the fact that it is done by the sovereign power and is not an act which could possibly be done by a private individual does not oust the jurisdiction of the civil courts. In I.L.R., 7 Madras 466 we have his famous judgment in Salem Vijayaraghavachariar's case. He held there that a Municipal Commissioner wrongfully removed from office by the Secretary of State can sue the latter for damages. In I. L. R. 8 Madras 175 he held that the rule of English Law which prohibits, except in certain cases, an action for damages, for oral defamation unless special damage is alleged, being founded on no reasonable basis, should not be adopted by the Courts of British India. In I. L. R., 9 Madras 175, he held that according to the Hindu Law a right to the possession of land is acquired by the first person who makes a beneficial use of the soil ; and that

assuming that the Crown has the right to oust any person who without sanction occupies waste land which has not been appropriated for any public purpose, it cannot, by a suit for a declaration of title or for ejectment, compel the defendant to prove possession for 60 years. In I. L. R., 10 Madras 28 F. B. he held that an advocate in India cannot be proceeded against civilly or criminally for words uttered in his office as advocate. In I. L. R., 10 Madras 87 he held that no action will be against a witness for making a false statement in the course of a judicial proceeding. In I. L. R. 17 Madras page 9 he held that an agreement to assist a Hindu for reward in procuring fee is void as being contrary to public policy. He said :

The case is otherwise when hretlings are employed, and their employment tends to deceit on parents in India as in England. It is true that there are child-marriages in India but the prevalence of such marriages appears to me to require, rather than exclude, the operation of the rule designed to prevent the possibility of deceit on parents.

In I. L. R. 17 Madras 212 he held that a temple committee appointed under Act XX of 1863 may appoint new trustees when there is no hereditary trustee to add to the existing trustees, but this power, though discretionary, must be exercised, reasonably and in good faith and according to the principle which is applicable to public trusts embodied in section 49 of the Indian Trust Act, and that if it is not so exercised, the power may be controlled by a Civil Court of original jurisdiction. In I. L. R. 17 Madras 222 he held that in a matter relating to caste systems over which the ecclesiastical chief has jurisdiction and exercises his jurisdiction with due care and in conformity to the usage of caste, the civil courts cannot interfere, and that a guru, as the head of a caste, has jurisdiction to deal with all matters relating to the autonomy of caste according to recognised caste customs.

It will thus be seen that the whole range of human actions and beliefs came under his purview, in his office as judge, and his judgments were at once sound and decisive. They are valuable contributions to Indian legal literature.

In the general introduction to his "Anglo-Indian Codes," Mr. Whitley Stokes says:—

My principal source of help has been the decisions of the High Court Judges, published in the Indian Reports from 1862 to 1886, inclusive—decisions which not only throw light on the ideas and customs of the people of India, but are, as a rule (if I may say so without impertinence), admirable for their logicality and learning.

Muthusami Ayyar adorned the Bench for over fifteen years, eliciting golden opinion from every one he came in contact with and he attained the highest position then open to a native of India, when he acted as Chief Justice for three months in 1891.

The office of Chief Justice had long ago been thrown open to an Indian by the appointment of Mr. Romesh Chandra Mitter on the High Court of Calcutta and in Madras alone the Government hesitated, as usual, in boldly following the precedent. But when at last an occasion arose and a well-tried man was ready at hand, it is praiseworthy that the Government of H. E. Lord Wenlock rose equal to the occasion and associated the First Native Judge of Madras with the proud distinction of acting as Chief Justice as well. This public event of the governmental recognition of the claims of educated Indians to the highest judicial office under the Crown naturally occasioned great rejoicings throughout the Presidency. The Indian press, both Native and European, voiced forth their high appreciation of Mr. Muthusami Ayyar's brilliant attainments, and in fact, they all availed themselves of this unique opportunity to review his long services to the country as a Judge.

Commenting on the appointment the *Hindu* observed :—

This is the second time in the history of India that a Native of the country has been elevated to this distinguished office. Lord Ripon while Viceroy appointed Sir Romosh Chander Mitter of Calcutta as Chief Justice of Bengal, during the temporary vacancy and now, as a senior *Puisne Judge* of the High Court, as one who has sat there for more than the double term of his immediate junior, as the Judge who during the last six years of his judicial career, has disposed of the heaviest and most difficult portion of the High court work in all its branches, his title to promotion has been long ago established. Without disparagement to his colleagues, it may safely be affirmed as open secret in professional circles that for several years the Bench of which he was a member commanded the largest measure of public confidence. By his erudition, his thorough insight into legal principles, and his ripe judicial experience, he has earned the distinction of being one of the ablest Judges in all India. Mr. Muthusami Ayyar has left his mark on the judicial record. He may be congratulated on the fabric he has reared in laying down the law for the country..... We are certain that even if the Statute has not limited the Government's choice to a Judge of the local High Court, the appointment would have been the same..... His powers of mind few English Judges have excelled in India.

AS LEGISLATOR

When the Honourable Mr. C. Sankaran Nair, now Sir Sankaran Nair, introduced the Malabar Marriage Bill into the Madras Legislative Council, a Commission was appointed by the Government to record evidence on the various issues raised in the Bill. The Commission consisted of Mr. H. M. Winterbotham, Mr. C. Sankaran Nair, Mr. Rama Varma, Mr. Maudappa Bangara, Mr. O. Chandu Menon and others, with Mr. Justice Muthusami Ayyar as its President. It examined one hundred and twenty-one witnesses *viva voce* and received three hundred and twenty-two sets of answers to questions. In his Minute on the Bill he has stated thus his views on the question of the methods and limits of social legislation.

I may take it that our procedure should be one of improvement and extension, and perhaps of partial reconstruction, as contra-

distinguished from indiscriminate demolition and that the agency through whose direct intervention this alliance is practicable should be in the main, indigenous.....If legislation is undertaken at all it must be on a popular basis and in a mode which interferes neither with caste nor with the immemorial law of inheritance, and sufficiently takes into account the habits of the people as regards the privacy of their women.

In the same Minute he said in another place :—

In dealing with a customary marriage in a society which recognises caste as quasi-religious institution, I see no alternative but that of recognising such marriage customs as have a legal origin although I would not formalise them but help on social evolution by inserting the words for the time being and thereby recognising any change which may take place from time to time owing to the spread of education. I do not think that the Government desire to improve the national morality by aggressive legislation.

His advice was sought by the Government on all important proposals for legislation and his Minutes on the Malabar Marriage Bill, the Ilbert Bill, the Hindu Gains of Learning Bill, the Jury Bill, the Religious Endowments Bill, the Infant Marriage and Widow Marriage Bill, the Age of Consent Bill, and the Local Self-Government Bill are admirable for their sobriety, their ripe wisdom and their luminous grasp of the proper principles and legitimate scope of legislation.

MISCELLANEOUS ACTIVITIES

He was a Fellow of the Madras University and was afterwards elected a Member of the Syndicate, which office was held by him till he died. In 1882 he delivered the Convocation Address to the graduates of the Madras University, and his address on that occasion is full of true wisdom and nobility of thought and sentiment. He took a keen interest in various public movements though his office precluded his taking any prominent part in political movements. He was the President of the Graduates' Association which was formed on 12th April 1885 and

which ceased to exist after some years. He was the Vice-President of the National Indian Association and took also a prominent part in the founding of the Victoria Caste and Gosha Hospital. He was the first President of the Maine Historical Society which ceased to exist after a time. He had a keen interest in the social and educational uplift of his countrymen and his sober and weighty views were valuable factors in the regeneration of the people consistently with preserving their racial genius in vigorous and powerful life.

VIEWS ON PUBLIC ADMINISTRATION

He was never weary of laying down that perfect official probity and integrity were required for individual and national well-being. He said :—

Remember that he who has no force of character, but who suffers himself to be so seduced into false principles by the necessities of ambition or of self-interest, or by the partialities of relationship or friendship, cannot respect himself in the sober intervals of reflection, however talented he may be and whatever success he may secure for a time ; and that he who has no self-respect has no right to expect that others should respect him. It is impossible to rate too highly the importance of high character for integrity among natives in the Civil Service. One corrupt man will not only ruin himself but will also bring discredit on the whole class to which he belongs.

In his evidence before the Public Service Commission he gave expression to the following striking observations :—

The dissatisfaction with the Statutory system is mainly due to the suppression of proved merit and ability in actual service.

Excepting a few political appointments and certain positions of great administrative importance, I would reserve no appointments for Europeans. I would not reserve Collectorships.

I am not in favour of the introduction of a system generally of guaranteeing pay for one kind of work, and asking the nominee to do an inferior kind of work. If this is done on the ground that the officer is unfit for the higher work, I regard it as an administrative absurdity incompatible with efficient administration. If it is done

to provide a training in some special work, it is an administrative defect not to provide a proper training ground suited to the position of the officers who are trained.

In reconstructing the uncovenanted service I would retain the Statutory Civil Service as a distinct branch. I consider this necessary to prevent mediocrity backed by seniority in the U. C. S. being confounded in practice, if not in theory, with distinguished merit and ability in service.

The country is passing through a period of transition, and unforeseen administrative emergencies may arise. I would, therefore, reserve power to Government to appoint any one they consider fit to any place, covenanted or uncovenanted, as a special case.

The principle and traditions of enlightened statesmanship and legislation seem to me to require in this country that no special privileges that derogate from the equal rights of citizenship should be recognised, except either on the ground that the particular privilege claimed must be tolerated for a time on considerations of policy or as an unavoidable administrative imperfection or for the reason that its preservation is necessary as a special protection against injustice.

POLITICAL VIEWS

An official could not be an active politician or agitator but he is bound to have political views because proper political life is the prime necessity, and the only means, of self-realisation for man as a unit of society. Sir T. Muthusami Ayyar said once, "I would ask one and all of you to remember that no nation whose material civilisation is primitive is politically great." He was of opinion that the continuance of enlightened and progressive British rule is necessary for our material and political development. He said :—

I am aware that there is hardly one educated Indian who does not really think that the British Government is the very best that we can have. Consider for a moment what would be the result, if the British were to withdraw from this country at once. Anarchy, internal dissension, and misrule would be the inevitable result. Our career of progress which has commenced will be checked and may not be revived for centuries to come. The light of Western civilisation which is now shining over the country will vanish before it has become widely diffused and before a national instinct chastened and invigorated by a constitutional spirit and love of progress has been fully formed.

This was the reason why he insisted on loyalty as a basic virtue. He said :—

Loyalty to the British throne and constitution is not only a virtue but its absence is a crime.

I desire to impress upon you that loyalty to the British connection is the foundation on which India should be raised, sustained and developed.

He clearly stated in what respects India has progressed and what great possibilities of further progress lie before us :—

The centuries of anarchy, lawlessness and misrule which preceded the introduction of the British rule have in several parts of India either nipped in the bud the spirit of enterprise even in the limited range within which it was possible, or arrested its further development or altogether blighted its growth.

When I compare what South India was 40 years ago with what it is at present and look at the various signs of progress which meet our attention all around, I cannot but feel, and I think that many of you will feel alike, that the country under the influences of liberal education and good administration has entered on a career of progress; it has made during the period very large strides on the path of progress.

There is something which makes me feel that the regeneration of India is a mission which the civilisation of the West will accomplish.

The life of an individual is measured by a calendar year, but the life of a nation is not to be so measured; the unit of its measurement is a century instead of a year.

He declared himself emphatically in favour of simultaneous examinations, a measure of reform which the Indian National Congress and eminent Indian publicists have been demanding for many decades past. He said :

I am in favour of simultaneous examinations, competitive in India and England, provided that there is no insuperable difficulty in holding the *viva voce* examination. . . . A simultaneous competition is desired, because a good number of young men in India will go to England and stay there for some time more readily after they succeed at the competitive examination than before it. The concession is the fairest that can be made.

He held decided views as to the political goal of India. He said :—

For a long time to come and until India is thoroughly regenerated we must be a protected nation, and where can we find better protection than in the British constitution? Even when India is regenerated, I for one think that our relation to Great Britain must be that of a Colonial Constitutional Government affiliated to and in federal loyal union with the parent constitution. By that time so much British capital will have been sunk in this country, so many of our plateaus will have been colonised by British settlers, and the tie of mutual interest and attachment will have been so much strengthened that the two nations will regard each other with that brotherly feeling with which they regarded one another before they left their Caspian home in remote antiquity.

Not only was Sir T. Muthusami Ayyar concerned with the Educational Department during some years of his life, but he was all through life full of a genuine desire for the educational uplift of the Indian people. Every problem in our land is ultimately and really a problem of education, and unless educational regeneration in respect of methods as well as of ideals and from an extensive as well as an intensive point of view can be achieved, all hope of steady and sustained national progress must remain an unfulfilled dream. In regard to physical culture he said:—

Without bodily strength and vigour sustained intellectual activity is impossible, and too much attention cannot be paid to physical training in this country where parents often unwisely subject their children to a mental strain disproportionate to their bodily strength.

I would not ask the University to take physical education directly into its own hands, that is to say, by making it one of the compulsory subjects in the examinations. But schools and colleges should make it a necessary part of their curriculum and affiliation must depend on such a condition.

In regard to mental culture he laid great emphasis on teachers' influence by example and precept as a vital factor in real and valuable mental uplift and equipment. This is an aspect that is increasingly ignored partly from the size of the classes, partly from the best talent of the country not being attracted to the noble profession of teaching, and partly from the commercial conception of

education which is itself a manifestation of the widespread and ignoble commercial conception of life as a whole. Sir T. Muthusami Ayyar said in 1881 while presiding over the Pachaiyappa's College anniversary celebration :—

You may not now be in a position to appreciate and do full justice to the name of a good teacher. But I may tell you that I am one of those who have profited by the influence of good teaching. It was my good fortune to be a pupil of that great teacher who is remembered with gratitude throughout this country and whose statue adorns the Presidency College. I need hardly tell you that I refer to Mr. Powell. I have profited night and day—I say night because I have spent several evenings up to 9 o'clock in marking the course of planets and comets through the equatorial—by his lessons of earnestness and devotion to work, and by his frown at anything that was mean or silly and by his smile at anything good and noble. I may also tell you that in after life many of those who had the good fortune to have been brought into contact with him have remembered him throughout their public career. I do not say, therefore, too much when I publicly confess that if I know anything that is good, I owe it in a great measure to the influence which that great teacher exercised upon me. There will, therefore, come a time in your after-life when, if you will look back to the incidents of your school days and reflect upon the good qualities which have gained you distinction in life, you will be able to trace them to the influence which your teacher exercised upon you at a time of life when you did not fully appreciate it.

Sir T. Muthusami Ayyar was never weary of pointing out the rich store of individual and national blessing to be derived from English education, though he was at the same time well aware of the need for the development of the vernaculars if the nation was to walk as a man in the glorious path leading to national progress and greatness. He said :

If ever this country is to become great, it must be through the diffusion of Western knowledge. It is Western literature that must raise the true national thought and feeling. It is Western science that must develop the resources of the country, manufacturing and other industries. It is the spirit of Western institutions to which we have to look for the political education of the people in India..... I need hardly tell you that higher education is imparted to you, not to enable you to earn your bread, but to enhance your value to the state and to your country as men of culture and leaders of national thought.

In his presidential address to the Association of Graduates on the 12th April 1885 he said :

The Association would also deal with the vernaculars so as to make them the *media* through which all useful instruction may be conveyed to the masses.

While emphasising the immense and vital need of English education, he declared clearly and emphatically that we must have a thoroughly national education. When presiding over a meeting of the Maine Historical Society at Madras he said :—

I find from my own experience in life that many of our graduates who know a great deal about Europe, about America, about China, and about the savages of North America, know very little about ancient India. If they are asked to explain the mechanism of their social life, or the mechanism of their domestic system, they very often show an amount of ignorance which has given me great pain, and if the English educated youths of India are to be accepted by reasonable men as exponents of progress and if the cause of progress is to be entrusted to their keeping, it is necessary that they should first know what they are and how they have come to be what they are, before they can hope to be what they desire to be. Unless in this way we have an accurate knowledge of our own civilisation, it is idle to talk of men who do not possess that knowledge as being able to bring about a regeneration of India.

He was of opinion further that proper moral and religious education should be given, as without it no system of education can be said to be truly national or bring about that blossoming of culture and that fruitage of love without which real national regeneration is impossible and must ever remain the land of dreams. He said :—

During my long experience no defect of the present system had vividly forced itself on my attention as the want of religious knowledge which I notice among students, especially among educated students. If one were to converse with an advanced Hindu student, the impression that the latter would leave on him is that so far as their religious philosophy was concerned, the student had still to go to school. I have often in truth felt humiliated when I found a Hindu graduate and a missionary discoursing on religious topics and the latter possessed better acquaintance with the Hindu system of religious philosophy than the graduate who had his attention called to it in his everyday life.

The Government system of education should be secular and secular only, but the religious and moral craving of the people and the cultivation of such should be attended to in their indigenous schools entirely under Hindu management.

In regard to women's education he said :

If the regeneration of India were ever to be effected, women must be restored to the position and power which by their nature and by means of education they were fitted to fill and exercise.

In regard to university education, he gave a new and fruitful idea which deserves to be taken up for active realisation. While proposing the Toast of the University at the Christian College Day celebration he said :

If you only persevere, our university will become in time as ancient as any of the universities in Europe and there will be a University day, when a toast will be proposed and received with enthusiasm and loved by your descendants for the memory of that illustrious band of educated men who have laboured so patiently and nobly for the regeneration of India under the auspices of the British rule.

In his splendid Convocation Address he dealt with three important and valuable cultural aspects of university education :—

The value of your university education consists less in the general knowledge which you have already acquired than in the capacity to add to it which you have been taught to cultivate.

Remember that your value to this university consists not in the official position, or professional eminence you may attain to, not in the fortune or name you make for yourselves, but in the extent to which you disseminate the principles and influences awokened in you by culture, and convert them, as well as in the cases of others as in your own, from mere general opinions into impulses of action and rules of conduct.

And let me remind you of the important duty you owe to the Government, to whom you are indebted for the liberal education you have received, of extending to your less fortunate brethren, in such measure as your opportunities allow, the light of knowledge of which you have had so considerable a share.

He further exhorted the educated men of India to study Indian botany, medicine, engineering, law and Indian languages and literature so that they may profit by the wis-

dom of India's great and unique past and bring their ideas into the living present for national uplift.

Finally he held enlightened and progressive views in regard to educational agencies. He held that the Government must aid education till national colleges come into being and that missionary agencies should not have a predominant place in the development of Indian education. In his Convocation Address he said :—

It is to be feared in the present circumstances, if the state aid be suddenly withdrawn, any movement to replace it out of the private wealth of the country would not in most cases be successful. Higher education will have to be practically left in the hands of missionary agencies in no sense indigenous..... But if all higher education is virtually committed to their hands, will it conduce to the variety of culture and the adaptation to the special needs of the country ?..... Apart from other objections, such a system will be without the guarantee of permanence and stability which is essential to a scheme of national education..... You will fail in your duty to yourselves and your countrymen if you do not steadily keep them in view and do not prepare gradually ways and means for giving a permanency to the system of higher education to this country, and to rest it eventually on the basis of national endowments..... I would ask you and all the educated men in this country to revive in villages the old healthy spirit according to which the school-master, supported by each village, was a part of the ancient village organisation, and to encourage, as your means and opportunities permit, the application of a larger share of the private wealth of the country in the interests of education.

VIEWS ON INDIAN LANGUAGES AND LITERATURE

Sir T. Muthusami Ayyar was decidedly of opinion that our primary literary duty is the development of virile vernacular prose literature in which we can have the summation of the highest Eastern and Western thought. He said in his Convocation Address :—

I may state that it is incumbent on you all at such a time to aid the diffusion of knowledge and the revival of literature which must precede the inauguration of lasting reform in every progressive society. Your duty in this direction consists in paying special attention to the development of the vernacular prose literature and

In infusing into it the elements of modern culture.....
..... In the later stages of the history of the vernacular literature in this country, it was corrupted by a desire for writing verses and by a preference to a style which the learned alone could understand ; and the inevitable result was the partial exclusion of the middle classes from the light and the benefit of such knowledge as existed in the country.....
..... I would ask you to remember at this very early stage of your career in life that the usefulness to your country of the liberal education you have received consists not in writing bad manuals in English but in writing good vernacular books on the models furnished by English authors.

Sir Muthusami Ayyar gave equally wholesome advice in regard to Sanskrit study—a matter in regard to which modern educationists and publicists spoiled by different agencies of denationalisation masquerading as missionary education, secular education, and national education are culpably negligent or ignorant. He said in the address above referred to :—

The study of Sanskrit and the revival of Sanskrit literature are of importance to you, not only because Sanskrit is your classical language, but also because it contains the key to the history, the philosophy, and the principles which lie behind and sustain the outer forms and visible signs of your social and family life. Whatever has hitherto been done towards the revival of Sanskrit learning has been done principally in Europe and not in this country. But as you examine the structure of Sanskrit as a language, its capacity for brevity and expansion, the facilities it affords for translating new notions into idioms suited to this country, and the classic modes in which it has been handled by such men as Valmiki, Kalidasa, Bhavabhuthi and others, you will cease to ridicule the tradition which speaks of it as the language of the gods.

SOCIAL PROBLEMS

In regard to social regeneration, he had very definite views definitely realised by him in his daily life. While warning men not to bow their heads before ancient error because it was ancient, he exhorted Indians not to become denationalised. He said in his Convocation Address :—

Never denationalise yourselves, never blush to own that you are Hindus, and never barter the influence which you possess

among your countrymen and which you may exercise for their good, for the paltry vanities of dress or taste.

He stated that our duty is to examine the old and the new soberly and wisely. He said :

'The proper spirit in which such work should be undertaken is, to borrow from a philosophic jurist one of intellectual freedom, of independence of all authority, but this sense of freedom should not degenerate into arrogant dogmatism, but should be tempered by that feeling of humility which would result from an unbiased contemplation of your limited individual powers.

The first thing to be done is to study our civilisation properly and in a spirit of love. In his address to the Maine Historical Society he said :—

Unless in this way we have an accurate knowledge of our own civilisation it is idle to talk of men who do not possess that knowledge as being able to bring about a regeneration of India. Of course, it is not because a theorist from the standpoint of reason says that a particular thing is good that therefore that it should be adopted by the whole community. What the theorist says may be good; but the methods which he suggests will prove crude and ill-adapted to the habits of the people in the country.

To the Indian intellectuals he preached the gospel of union—a gospel badly needed to-day when our godless and de-nationalised education coupled with a general restlessness and lovelessness have brought into existence new schisms and hatred. He said in his Convocation Address :

In the gown and hood which you have been authorised to wear, you should recognise a badge of common service in the cause of your country and a bond of brotherhood between you and those who advance the interests of civilisation, and you should forget all differences in caste or creed, in social position, rank or wealth.

On the question of social intercourse between our Western brethren and ourselves he said :

My only desire is that the native and the European should not in their relation as fellow-citizens overlook the exigencies of progress but act with mutual consideration, so that their descent from the common stock in the far antiquity may become the watchword for mutual esteem, cordiality, love and brotherhood.

ON INDIA'S INDUSTRIAL REGENERATION

Sir T. Muthusami Ayyar has given some valuable ideas on the subject of our industrial regeneration—ideas as much needed to-day as in his time, or rather more needed now than in those days because in the midst of our inane if pompous loquacities we have missed the real factors of India's material greatness. In his great Convocation Address he said :—

Great manufacturing industries have yet to come into existence in Southern India, and as a people, Hindus have done little or nothing towards the application of science to the improvement of agriculture and of the productiveness of the soil. There are again other resources of the country which require to be developed and which wherever they are partially developed are not developed with the aid of indigenous capital or skill. Gentlemen, there is singular apathy in this respect and nothing that is worth mentioning has been done during the last 30 years that the system of liberal education has been in existence. I for one should rejoice if you would bear this in mind when you select your profession, and if those among you who may come to own landed property or possess capital would utilise science so as to augment your own wealth and open the way to new industrial enterprise and new sources of wealth to the country. Even those whose pursuits may be chiefly literary, may aid progress by translating into the languages of the people practical treatises on natural science.

CONCLUSION

Such was the great life of Sir T. Muthusami Ayyar and such was his message of hope and uplift to his beloved motherland. For 17 years he held the office of High Court Judge. His long connection of about 40 years with the public service was unbroken by a single year's rest. His devotion to work was altogether without parallel. "It has sometimes been said by unfriendly critics of the Natives of this country that they are incapable of the steadiness of effort and devotion to duty that characterise Englishmen, but the life of Sir T. Muthusamy Ayyar affords the best refutation of such criticism. Taking quality and

quantity together, no other Judge of the High Court has shown such an excellent record of work as Sir T. Muthusamy Ayyar." The heaviest and the most difficult portion of the work of the Court generally fell to his lot and he always did it to his satisfaction. It was to him that Col. Hughes-Hallett referred when he addressed the Madras Graduates of 1888 this magnificent panegyric :

You have in this town among your own countrymen, a living proof that the greatest abilities and the greatest industry may go hand-in-hand with extreme modesty, and may yet win, not only the highest personal esteem, but also the highest official rewards.

But in this sketch we are primarily concerned with Sir T. Muthusamy Ayyar, the Judge. And of his place in the roll of eminent Judges there can be no two opinions. Soon after his death, the *THE MADRAS LAW JOURNAL*, the leading legal organ of South India, which at the time had for its editorial control such distinguished legal luminaries as Sir P. S. Sivaswami Ayyar and the late V. Krishnaswami Ayyar and P. R. Sundara Ayyar—who afterwards rose to great offices of State—wrote in its leading columns :

If there was any one characteristic which distinguished Sir T. M. Iyer above all others, it was his spirit of conscientious thoroughness, and as he did not spare himself in attaining thoroughness, he had no toleration for a want of the same quality in the practitioners who appeared before him. He had a calm, judicial temperament and notwithstanding some fretfulness in the closing years of his life, his patience was unfailing. Master of a dignified style he was a sound lawyer, and fit to take rank with the most distinguished Judges in the land. He has practically made the greater portion of the Madras Series of the Indian law Reports and the many volumes of these reports bear abundant testimony to his work. The language of Sir Arthur Collins at the Memorial meeting was not the exaggeration of a funeral panegyric when he remarked that in the death of the late Judge the High Court had lost a "Tower of strength."

We cannot better conclude this sketch than with the noble verses from the greatest of English poets with which

he concluded his great Convocation Address and which admirably sum up his great career :—

Love thyself last; cherish those hearts that hate thee ;
 Corruption wins not more than honesty ;
 Still in thy right hand carry gentle peace,
 To silence envious tongues ; be just and fear not ;
 Let all the ends thou almost at be thy country's,
 Thy God's and Truth's.



DWARKANATH MITTER

I knew him before he was raised to the Bench. I have sat with him frequently as a colleague ; and I believe that I have had as good an opportunity as any one, of forming a just estimate of his character. Though now speaking in his presence, I may be permitted to say that he is a man of ability and learning ; very unassuming, yet high-minded, independent and always ready to maintain his opinion so long as he conceives it to be right and equally ready to abandon it if convinced that it is wrong. He is a man to whom I am sure it would give pain to injure the reputation or to wound unnecessarily the feelings of any one. He is the second native gentleman who by his own abilities has raised himself to the high position of a Judge of the High Court.

In these words the Chief Justice of the Calcutta High Court, Sir Barnes Peacock referred to Mr. Justice Dwarkanath Mitter in the course of his judgment in the summary proceedings taken against one William Tayler.

Although Mr. Paul in a case which came on for hearing before the same Chief Justice and Mr. Justice Macpherson, referred to the remarks of the *Englishman* of Calcutta that these words would have caused Mr. Mitter to blush if he could, it was admitted that these remarks were not eulogistic but were a just estimate of the great man.

The first Indian Judge of the Calcutta High Court was Babu Sambhoonath Pandit who was appointed as Judge when the Judge designate Babu Romaprosad Roy died before he could assume office. Babu Sambhoonath was Judge from the constitution of the High Court till his death in June 1867. And on Babu Sambhoonath's death, Babu Dwarkanath Mitter was offered the vacant place, although he was then only 33 years of age.

Dwarkanath was born in the village of Angunasi in the Hooghly district of Bengal in 1833. He had his early education in his village school; and in his seventh year, he was sent as a pupil to the Hooghly Branch School; and he was promoted to the second class of the Collegiate School when he was only thirteen years old. He had a brilliant career at the College and won Government scholarships in every examination. He held the Junior Scholarship in the years 1847 to 1849 and the Senior Scholarship till 1850. He also obtained special scholarships. At the public examination at the end of the collegiate course, he stood first among the successful candidates from all the Colleges in Bengal. Babu Dwarkanath did not confine himself, however, merely to success at the examinations. He had a passion for the English language and for Mathematics. At college he won the Gold Medal for the best English essay in 1853; many Europeans of his day used to admire his English and pronounce it to be superior to that of most Englishmen. His passion for Mathematics led to his friendship with Babu Sreenath Dass; Babu Sreenath was a brilliant mathematician; even when he was a student at College, he was appointed to act as a teacher of Mathematics in a temporary vacancy; and after his course was over, he became the professor of Mathematics at the Sanskrit College at Calcutta. But his friendship with Babu Dwarkanath induced him to take to the legal profession. For, notwithstanding Babu Dwarkanath's love for Mathematics, his heart was set on becoming a lawyer. His father was a law agent practising in the Hooghly courts and Dwarkanath's passion for law was therefore inherited from his father.

After his Collegiate course was over, Babu Dwarkanath was not immediately able to join the law course and

appear for the Law examination. His father died about that time and the whole burden of maintaining the family shifted to young Dwarkanath's shoulders. So, he was forced by circumstances to accept the place of a clerk on Rs. 120 a month in the office of the Junior Magistrate of Police at Calcutta. But he did not long remain at the clerical desk. As soon as circumstances could allow, he began not only to prepare for the Law examination himself but induced his friends Babu Onookool Chandra Mookerjee and Babu Sreenath Dass to do so. All of them obtained their Diploma in 1856. Babu Dwarkanath was enrolled as a Vakil of the Sudder Devany Adalat on the 30th March, 1856 and his two friends shortly afterwards. Babu Onookool became a Judge of the High Court; Babu Sreenath lived to a ripe old age retiring from the Bar in 1906 after fifty years of practice. He was known as "the Nestor of the Vakil Bar" and he used to talk frequently about Babu Dwarkanath, the friend of his youth and speak highly of his abilities and of the warmth of his friendship. The few details that the present generation know about Babu Dwarkanath are mostly due to the kindly references that Babu Sreenath used to make of his companions at the Bar.

Babu Dwarkanath worked in the chambers of Babu Romaprosad Roy; opportunities do not always attend on the young junior at the Bar; but in Babu Dwarkanath's case, an early opportunity occurred within six months of his joining the Bar. His leader Babu Romaprosad Roy was engaged arguing another case; and the Judge insisted on Dwarkanath getting along with the case in his leader's absence. This was young Dwarkanath's opportunity. The ability with which he handled that case, established his reputation as a brilliant lawyer and successful advocate; and from that

day, his position at the Bar was secure. An European contemporary of his referred to those early days at the Bar of Babu Dwarkanath in these words :

While engaged in the forensic arena, whether with me or against me, I well remember how his zeal, his conspicuous ability and honest pleading challenged the admiration of all and especially my own admiration. Those years of advocacy were his initiation to the position which he at last attained.

With the death of his leader Babu Romaprosad Roy and with the elevation of Babu Sainbhoonath Pandit to the High Court Bench, Babu Dwarkanath Mitter became the accredited leader of the Vakil Bar at Calcutta. The pages of the *Weekly Reporter* and the *Bengal Law Reports* bear ample testimony to his extensive practice and to the great part he played in the shaping of the Hindu Law and of the Law of Land Tenures in Bengal. In what is known as "the Great Rent Case" he successfully argued on behalf of the ryots, pitted as he was against a combination of the best talents of the European Bar backed by the landed aristocracy. It is interesting to note that as an advocate he was fearless and independent and that his able conduct of the cases entrusted to him contributed largely to the building up of the excellent reputation of the Vakil Bar at Calcutta in those days. Babu Dwarkanath was a hearty supporter of the poor man's cause and we are told that in many cases, he refused fat fees from the richer litigants and appeared for practically no fees for the poor opponents who had just cases. In "The Great Rent Case," he not only appeared before the trial court and the Divisional Bench, but argued before a Full Bench of all the fifteen Judges of the High Court continually for seven days. The Chief Justice Sir Barnes Peacock was struck by his remarkable skill in the conduct of that case and consequently Babu Dwarkanath was offered the

place of the Government Pleader which fell vacant shortly afterwards. The Government Pleadership, as it proved, was only stepping stone to the High Court Bench.

As a Judge, Babu Dwarkanath was as fearless and independent as he was as a lawyer. His judgment in "the Malda Case" is a fearless exposition of the evils of personal government and of the vagaries of the departmental officials. His fearless characterisation of the conduct of one William Tayler as "a fraud" led to a strong agitation among the Europeans at Calcutta. Mr. Tayler belonged to the Bengal Civil Service. On retiring from service, he was admitted as a Vakil of the Sudder Court; and upon the amalgamation of the Supreme and Sudder Courts, he was, along with others, enrolled as a Vakil of the High Court. He subsequently carried on business as a mooktear or law agent in the District of Patna. He was retained by Ranee Usmedh Kower of Ticarue for two years on a monthly salary with a reward for every case won. The Ranee and Mr. Tayler however quarrelled; and the Ranee filed a suit against Mr. Tayler for account and for payment of moneys received by him as her agent; her suit was successful. A cross suit by Mr. Tayler on a bond alleged to be executed by the Ranee was dismissed. In execution of her decree, the Ranee attached Mr. Tayler's estate; the attachment petition was dismissed by the District Judge for statistical purposes and restored afterwards. Meanwhile Mr. Tayler sold his property to Mussamit Zuhooran who was not made aware of the attachment and who had to pay the Ranee of Ticarue the amount of her decree for which she had attached the property. Thereupon Mussamat Zuhooran sued Mr. Tayler, who being away from Calcutta had instructed his solicitor to defend; when that

suit came on appeal before the Chief Justice Sir Barnes Peacock and Mr. Justice Dwarkanath Mitter, it was argued that the payment by Mussamat Zulhooran to the Ranees was not voluntary and was only to save the estate she had bought from Mr. Tayler from being sold by the Ranees for her decree; and it was also argued that Mr. Tayler had concealed the fact of the attachment by the Ranees from his purchaser and practised a fraud on her. The Chief Justice was so fully satisfied that the payment was not voluntary that he did not go into the other question. In the course of his judgment, however, he remarked :

The Principal Sudder Ameen says that "the concealment, if it was one was by no means fraudulent"; but I feel at a loss to understand what notions the Principal Sudder Ameen entertains of fraud, when he holds that if a gentleman sells an estate which he knows has been attached under a decree against him, and conceals the fact from the purchaser, and receives the purchase-money, the concealment is one which does not fall within the class fraudulent.

Babu Dwarkanath, who sat with the Chief Justice, said :

I entirely concur; I feel no hesitation in holding that the plaintiff is entitled to recover, both on the ground that she has paid a debt due from Mr. Tayler to Ranees Usmedh Kower when she was under no obligation to pay it, as also upon the ground that a fraud has been perpetrated against her by Mr. Taylor in concealing from her the fact that the estate sold by him to her was under attachment in execution of a decree of Court. I should have been extremely sorry if the state of law were otherwise.

Soon after this judgment, Mr. Tayler applied for a review of judgment suggesting that the fraud was by his agent and his defence was also unauthorised.

Both the Chief Justice and Mr. Justice Mitter refused the review, the Chief Justice on the ground that there was nothing in his judgment which needed to be reviewed; Mr. Justice Mitter on the ground that the proper course was for Mr. Tayler to take action if so advised against his agent and that on the evidence in the

case, he could not come to any other conclusion nor pass strictures on the agent who was not represented.

Thereupon two letters were published by Mr. Tayler in the *Englishman* of Calcutta attacking Justice Dwarkanath, on the 7th and 12th April 1869; the Chief Justice read them on the evening of the 12th April and "considered it necessary to vindicate the honour and character of my honourable colleague and the dignity of the Court." He consulted Babu Dwarkanath early next morning and as Mr. Tayler had arranged to sail for England that morning, he immediately had him arrested and brought before the High Court to answer a charge of contempt of Court.

The full report of the judgment of the Chief Justice in these contempt proceedings was, along with the report of the contempt case against the Editor of the *Englishman* which followed, unearthed in 1917 in the *Amrita Bazaar Patrika* case. As the judgment of the Chief Justice in these cases show in what high regard Mr. Justice Dwarkanath was held by him and by the other Judges of the High Court a few passages may be cited therefrom:

If the character of any other of the Judges had been similarly assailed, I should have thought it necessary to adopt a similar course. But it appeared to me to be especially necessary in the present case when the attack had been made upon a native gentleman, the only one of his countrymen who had a seat on the Bench of the High Court.

Judges, although they agree as to the judgment which ought to be given in a particular case, do not always agree in the reasons for arriving at that conclusion, or one Judge may have an additional reason upon which the other has expressed no opinion. There is no reason why a native gentleman, who by his abilities has raised himself to the Bench of the High Court, is to be maligned and slandered because he has the independence to express an opinion of his own or even to differ from the Chief Justice. What would become of the independence of Judges if this were to be allowed?

The passage with which this sketch begins is also from the judgment in this case.

Mr. Tayler admitted contempt and apologised; and the Chief Justice sentenced him to imprisonment for a month or till further orders and to the payment of a fine of Rs. 500. The apology published by Mr. Tayler in the *Englishman* on the 22nd April was considered inadequate; on a fuller apology being published on the 24th and on the fine being paid, Mr. Tayler was released from prison that he might "not be detained in this country an hour longer than was absolutely necessary."

But the European merchants of Calcutta were not satisfied with the noble stand made by the Chief Justice in vindication of Mr. Justice Dwarkanath's character. They started a Rupee Fund to pay the fine and expressed their disapproval of "the cruelty" of the Chief Justice; and letters were published in *The Englishman*, which the Editor afterwards explained as not intended to be in contempt of Court; all imputations of improper motives were withdrawn; Mr. Tayler also dissociated himself from the appeal made by his friends to the Lieutenant-Governor in this matter. Mr. Justice Mitter's conduct throughout this case was highly praiseworthy and added to his reputation as a fearless and independent Judge. The Chief Justice remarked :

I am free to admit that I alone am responsible for all that has been done in this matter, though my honorable colleague does not desire to be relieved from any part of the responsibility.

One hears the voice of Dwarkanath echo these words of the Chief Justice :

And now I wish to declare publicly and emphatically that the Judges are not and cannot be, influenced in the discharge of their duty by any attack made upon them by the press. Nothing that has been said by the press upon this subject, and nothing that can be said, no fear of the threatened storm, can ever divert me or

my honourable colleague from pursuing the plain straightforward course which our consciences dictate. No unfair criticisms can disturb my equanimity nor in the slightest degree affect my happiness. They are based on the consciousness that the honest and conscientious discharge of my duty has ever been the ruling principle of my life. That is a foundation too strong to be undermined by critics, who attempt to criticise that which they do not understand, or to be shaken by storms which it is in their power to raise.

Babu Dwarkanath Mitter's judgments show that he was an able exponent of the Hindu law as laid down in the Smritis and in the Dayabhaga. He was not a believer in Social reform by judicial legislation. His judgments are an able exposition of the doctrine of spiritual benefit on which the Dayabhaga scheme of inheritance is founded and have been approved of by the Privy Council. He it was who laid down that a minor Hindu can adopt if he had attained the age of discretion. He said :

The ceremony of adoption under this Hindu Law is essentially of a religious character; and as, under that law, every childless Hindu is deemed sure to go to the hell called "put" the obligation to adopt a son must be necessarily considered as imperative as a matter of religious duty among the Hindus. It has been argued that a childless Hindu is under no religious obligation to adopt a son; but this opinion is contrary to the texts both of the Duttaka Chundrica and the Duttaka Mimamsa, which are undoubtedly entitled to be considered and have been always considered as the highest authorities on the subject of adoption.

Then after citing the texts he concludes :

These passages conclusively show that a childless Hindu is found to adopt a son, if he is at all anxious for his own salvation and for the preservation of the obsequies due to his ancestors.

And then he discusses the disabilities of a minor thus :

Every act done by a minor is not necessarily null and void. Those acts only which are prejudicial to his interests can be questioned and avoided by him after he reaches his majority. But no such prejudicial character can be predicated of adoption in the case of a childless Hindu and as under the Hindu shastras a minor who has arrived at the age of discretion is not only competent but bound to perform the religious ceremonies prescribed for his salvation, we cannot hold the adoption made in this case to be invalid merely because the adoptive father was, in the eye of the law, a minor.

Another case which showed that Babu Dwarkanath Mitter had a shrewd perception instinctively not only of the law of the Smritis but also of the popular Hindu conceptions of the law is the famous case of *Keri Kolitani*. The question in this case was: whether a Hindu widow succeeding to the estate of her husband holds it unconditionally for her life or only on condition of her "preserving unsullied the bed of her lord." In an early case where the widow left the family house of her deceased husband not from any improper motives, the Pandits had given their opinion that she did not lose her husband's estate. The natural inference from that case would be that if she left her husband's home for improper purposes, she would forfeit the estate; in a later case, however, it was held that such forfeiture, involving as it did loss of caste or expulsion from caste, was relieved by the "Removal of Castes' Disabilities Act" of 1850. A later decision of a Bench of the Calcutta High Court held that unchastity of a widow subsequent to her inheriting her husband's estate does not open out the succession in favour of the next reverisoner. In this state of the law, the case of *Keri Kolitani* came up before Justice Mitter and another Judge. Mr. Mitter dissented from the earlier decision and therefore referred to a Full Bench the question: Whether, under the Hindu Law, as administered in Bengal, a widow, who has once inherited the estate of her deceased husband, is liable to forfeit that estate by reason of unchastity.

A majority of Judges including Couch, C. J. Jackson, Phear, Macpherson, Mackby, Ainslie, and Pontifex JJ. held that there was no forfeiture while Kemp, and Glover JJ. agreed with the opinion of Mr. Justice Mitter.

The majority opinion, which prevailed, created a great stir among the Hindus of Bengal; an appeal to the Privy Council was filed and the expenses of the appeal were met by a public subscription. The Privy Council gave special leave "on account of the importance of the questions submitted for determination and the great interest which the Hindu community take in it." As Mr. Mitra, the Tagore Law Lecturer says, "It (the judgment of the majority) appeared to be opposed to the instinctive convictions of the community."

Sir Barnes Peacock, who delivered the judgment of the Privy Council ultimately dismissing the appeal said at the outset: "The opinions of Mr. Justice Mitter, who was himself a learned and accomplished Hindu lawyer and those of the other two Judges who were in the minority, are entitled to very great weight." And he preferred to rest the decision on the firmer ground of the inconveniences that would arise if the opinion of the minority were upheld. Mr. Mitter's view that a widow is a transferee for the benefit of her husband's soul was rejected as being "a somewhat fanciful analogy" and the decision concluded:

मध्यम न्याय

Inconvenience would not be a ground for deciding a case like the present if the law were clear on the subject; but it is an argument which may fairly be adduced when authorities conflict.

One forceful argument in favour of Mr. Justice Mitter's view was lost sight of. The Widow Remarriage Act deprives the remarrying widow of her deceased husband's estate and if unchastity does not entail a forfeiture, a premium is set as it were on unchastity and a handicap on remarriage.

Mr. Justice Mitter helped also in the growth of the other branches of the Indian Law, which was then in the

formative stage. He laid down, for example, the principle that a person should not be adjudged guilty on the uncorroborated testimony of an accomplice ; and in doing so, differed from his colleague on the Bench. In the case of *Gidhari Lal Ray*, his judgment on the many intricate points of law were fully adopted and endorsed by the Privy Council. This is what a colleague of his on the High Court Bench said of Babu Dwarkanath :

His extensive acquirements, varied learning and rapid perception, his keen discrimination, his retentive memory, his clear good sense and his instructive love of justice—all made him a most valuable colleague and one with whom it was a real pleasure to share the labours of the Bench. Amongst his more brilliant, though less important qualities was his surprising command of the English language ; the readiness, precision and force with which he used that language are not common even among those who speak it as their mother tongue, and were the theme of constant admiration.

And on the occasion of his death, this was said on behalf of the European Bar :

No judge inspired us with more confidence for high intellect, for none had we a higher respect, and there are few indeed, if any, who, we felt more certain, would take the most accurate and at the same time the widest view of every question that was placed before him for decision.

Justice Mitter's judgments in other branches of the law were held in as great regard as were his judgments on Hindu Law. Particularly in Criminal law, we find him taking a strict and proper attitude on the admissibility of evidence against the accused. In an early case, reported in 3. Bengal Law Reports, the question arose whether in revision a Judge can interfere with the verdict of ' not guilty' pronounced by a Jury. It was held by one Judge that the High Court could interfere in revision because ' trial by Jury' was in its infant stage in India and required the supervision of the Judges if failure of Justice is to be avoided. The answer to this is found in the judgment of

the Chief Justice with which Justice Mitter concurred : " If the country is not ripe for trial by Jury, it would be better to amend the Code of Criminal Procedure, than to have trial by Jury shorn of the safeguards which it provides. But when it is being tried experimentally, and the Legislature has declared that a verdict of acquittal is not to be set aside upon appeal, or reversed upon revision, we ought not to put such a construction upon the express words of the Legislature as to deprive that mode of trial of one of its most important and essential principles." As an example of Justice Mitter's grasp of the essential ingredients of an offence the case of the *Queen vs. Doyal Bawri* can be cited. In that case, the accused Bawri was convicted of "attempting to cause mischief by fire, knowing that he would thereby destroy a building used as a human dwelling." Mr. Justice Glover on appeal was for affirming the conviction. He thought that the possession of an instrument to commit mischief by fire and the going about of the person with it are sufficient to raise a presumption that he intended to commit the act and had already begun to move towards execution. But Mr. Justice Mitter differed from this view and rightly. He held that the mere possession of an instrument to commit mischief by fire was by no means sufficient to warrant a conviction for "attempting to cause mischief by fire to a building" as the overt act "towards the commission of the offence" required by law did not exist. The judgment in this case shows also that unlike the generality of Civilian Judges, Mr. Mitter acted on the wholesome maxim of Criminal law, that it is rather better that ten guilty persons escape than one innocent man be made to suffer; at the same time his judgments show that he did not suffer from that mentality, which is alleged to be found in some Judges, of reluctance to

find a person guilty and sentence him even were his guilt is proven.

Mr. Justice Mitter was anxious that the courts of justice should maintain a high reputation for speedy administration of substantial justice. It has been remarked by the Privy Council that the difficulties of the Indian client begin after getting his decree. One of the difficulties in the way of execution of decrees was the dismissal, without proper reasons, of execution applications for the purpose of showing disposal. This practice seems to have prevailed even in those early days and in a number of judgments Justice Mitter has condemned this practice in strong terms. Thus, in the case 3 Bengal Law Reports, appendix, page 17, he begins the judgment by saying: "This case affords a glaring instance of the gross injustice that is so often done to decree-holders in this country, by the arbitrary manner in which execution cases are generally dealt with by the lower Courts"; and again at page 19: "It may be all very well for judicial officers entrusted with the execution of decrees to swell their monthly returns by striking off every execution case at random on the last day of the month, but there cannot be the least doubt that such proceedings on their part are productive of the greatest hardship and injustice to the decree-holders, whose cases are thus struck off. We do not see any reason why the hearing of execution cases should not be conducted in accordance with the rules laid down in the Code of Civil Procedure; why, in fact, proper dates for the hearing of those cases should not be fixed, and notice thereof given in due time to all the parties concerned; or why, when an execution case is for some reason or other put off on a particular day, a fresh day should not be fixed for its hearing exactly in the same way as is

done in the case of original suits; or why again, applications relating to execution of decrees should be dealt with, in the first place, by that most meaningless and mischievous order, "let it be kept on the record," and then struck off on the last day of the month.....It is high time that this practice should be at once discontinued, or otherwise all the time and labour we employ in passing our decrees, are absolutely thrown away, inasmuch as we shall have afterwards to declare that they are all barred by limitation. It is notorious that the troubles of a suitor in this country only begin when he has obtained a decree." These stringent remarks of Mr. Justice Mitter went a long way towards bringing about a discontinuance of this objectionable practice.

A fantastic story is told of Dwarkanath's mannerism in argument, akin to the story about Justice Muthuswami Iyer's toes told by Mr. Eardley Norton :

While practising as an advocate Dwarkanath had a curious habit of seizing a pen and twisting it with both hands as he argued a case. The vehemence of his arguments rested on the force with which he twisted his pen. The moment the last piece of the broken pen dropped from his hands he would lose the thread of his arguments. To guard against this contingency, one of his clerks always stood behind him with a good stock of quill pens, and the moment a pen dropped from his master's hands another was slipped in.

Another story told about Dwarkanath's powers of memory is more plausible. Once, having gone through an entire set of *Alison's Europe* in a fortnight, he asked a friend to examine him upon their contents. He not only answered every question, but reproduced whole sentences from the work.

But Mr. Justice Mitter did not remain long on the High Court Bench. His health was always poor. In April 1868, he had an attack of cholera which very nearly proved fatal. In 1872, he had a virulent attack of

Dengue and in November 1873 he was discovered to be suffering from cancer of the throat; he could not continue on the Bench and in January 1874 he retired to his native village only to die on the 25th February amidst his relations. In private life, Dwarkanath was a very meek gentleman and his manners were unostentatious. He had genuine feelings of love towards his narrow circle of friends. Although he was raised to a high position early in life, he was singularly free from all pride and vanity. Under an apparently rough exterior, he concealed a noble and generous heart. He revered his mother and used to hand over to her absolutely all the large income he had at the Bar and his salary as a Judge. His private life was not all happiness. He lost his best friend Hurish Chunder Mukerjee in 1868 and his wife in 1871 and although he married again, his days of matrimonial happiness had ended.

Babu Dwarkanath was not only interested in Mathematics but also in Philosophy. He was a warm admirer of Comte, and learnt French late in life in order to study Comte's works in the original. He accumulated a large library of French books. His interest in Mathematics led him to translate Comte's Analytical Geometry into English. He attempted a fusion of the teachings of Comte and of Hinduism; and he kept himself in constant touch with Congreve and other Positivists on the topics of philosophy. His passion for English literature is seen in the fact that on the day before his death, he had his favourite passage from "Queen Mab" read over to him. The last words that he wrote were against this passage and they were, "Live for others". To that motto, he lived up to, in the few but crowded years of life that was given to him.

JUSTICE NANABHAI HARIDAS

NANABHAI HARIDAS belonged to a Kayastha family of Gujarat and his family had been in the service of the Nawabs of Surat in the eighteenth century. Nanabhai was born on the 5th of September, 1832 in Surat. When he was five years old he was sent to a vernacular school at Surat for his elementary education. From that school he passed on to the Government English school in due course (1843). He was a favourite pupil of Mr. Henry Green the Headmaster of that school. His educational career was uniformly brilliant. In 1849 he joined the Elphinstone Institution which some years later came to be separated into the Elphinstone High School and Elphinstone College at Bombay. During his college course he was the recipient of several prizes in Literature, Logic and Political Economy. He also got the Clare and West Scholarships. Principal Harkness was particularly attracted towards Nanabhai and he said in the course of a report in 1851: "There are several prominent students in the class, among whom Nanabhai Haridas deserves particular mention." After his collegiate course in 1852 Nanabhai was appointed one of the two Assistant Translators to the Supreme Court at Bombay, then presided over by Sir Erskine Perry, Chief Justice. The Chief Translator at that time Mr. Murphy referred thus to the services of Mr. Nanabhai Haridas as Assistant Translator: "The experience acquired by him (Nanabhai) in the above period as a Translator was very great. This experience he turned to the best

advantage. Possessing a superior knowledge of English and first rate abilities, when he joined the office he devoted his mind with great industry to perfect himself in his duties as a Translator with a success that I have never seen surpassed. I feel bound to say that without the very valuable aid received from his industry and skill during the period above mentioned I never should have been able to get through the heavy work thrown upon the department. I consider him indeed as one of the hardest working, most valuable officers of the Supreme Court."

In 1855 when a Law School was newly opened at Bombay for the training of vakeels Mr. Nanabhai Haridas joined the School and devoted himself after office hours to the study of law. In spite of the heavy work he had to do in office as a Translator Mr. Nanabhai was able to gain the first place in every annual examination in law and win prizes. Professor Hoare who taught at the Law School remarked : "He (Mr. Nanabhai Haridas) has at each annual examination passed the best examination and had been deservedly placed at the head of the class. His conduct and demeanour have at all times been all that could be desired ; and from the opinion which I have formed of his character and abilities, I fully expect that he will rapidly rise and distinguish himself in any calling or course of life he may think fit to adopt."

Nanabhai was one of the very first set of matriculates of the newly constituted University at Bombay, being admitted as a student of the University in 1860. It is interesting to note here that the present usual course of first passing the Matriculation examination before admission to the Law School was reversed in his case. He passed the Final Examination in Law in June

1859 and the Matriculation examination in October 1859. Even before the Law School Examination he had passed the Munsif's Examination held in January 1857. In the year 1863 he passed the examination of the University of Madras held for the Law Degree. As he had already passed the Law examination at Bombay in 1859, he was enrolled as a vakeel of the court of the Sudder Dewaury Adalaut in 1861. Even after his enrolment as a vakeel, he was allowed to continue as a Translator at the Supreme Court. Apart from his official duties as a Translator he was selected by the Government of Bombay on account of his special knowledge of Guzarati to translate into that language the Civil and Criminal Procedure Codes and the Indian Penal Code. When Nanabhai Haridas was doing work at the same time as a vakeel of the Sudder Court and as translator in the Supreme Court and as Official Translator to Government of the Procedure Codes and the Penal Code, he was appointed as Professor of Law in the Ahmedabad College with liberty to practise. But the Chief Justice, Sir Mathew Sausse considered him indispensable as a Translator and would not relieve him of his work to enable him to join the Law College; and the post of Professor of Law was consequently kept open for him for nearly two years.

In 1862 when the High Court was established in Bombay, Nanabhai Haridas was allowed to practise as a vakeel on the appellate side of the newly constituted High Court which succeeded to the powers of both the Sudder Court and the Supreme Court. Soon after his enrolment as a vakeel of the High Court Mr. Nanabhai found that with his ever growing practice he could not do justice to his work as Translator. Conse-

quently he resigned his office in 1863. Thereafter there was no case of any importance from his native district of Guzarat in which he did not appear on one side or the other; but his practice was not merely confined to litigation from his native district. In 1867 the Government of the day offered him the post of First Class Subordinate Judge, which however Nanabhai refused. In 1872 he was made a Fellow of the Bombay University. In 1873 he was offered the Dewanship of Baroda which also he refused. In 1873 he was offered the post of an acting Judge in the High Court. The *Times of India* wrote :—"Be it said to the credit of Mr. Nanabhai that he never sought the appointment; on the contrary the appointment had sought him." At the time of this offer, Sir Philip Woodhouse who was then the private Secretary to His Excellency the Governor of Bombay referred to him in these words : "A sound lawyer, as well versed in the principles of English jurisprudence as in the Hindu Law, Mr. Nanabhai possesses in an eminent degree some of the highest qualifications for the judge's office,—a cool judgment, gravity of demeanour, independence and decision of character and stern rectitude". Mr. Nanabhai accepted the acting post and between the years 1873 and 1884 he had acted as Judge of the High Court on several occasions and in the latter year he was made a permanent Judge of the High Court. Between May 1873 and June 1884 in about 11 years no less than 9 times with very short intervals of a few weeks he oscillated between the bench and the bar. This overlooking of his claim to a pukka judgeship was strongly commented upon by the papers at the time. He was only thought fit to be a Government Pleader in 1877 after having acted as judge for more than 4 years! Already in 1877 he had acted as

Professor of Law in the Government Law School for some time. In 1880-81 he was made the Government Pleader of the High Court, and he appeared for the Government in many important appeals. He continued as a permanent Judge from 1884 till his death in 1889. In 1887 he was also appointed Judge of the Parsi Matrimonial Court.

We can now discuss a few cases decided by him alone or along with other judges, which indicate his wonderful grasp of legal principles.

On the question whether a *Dasiputra* of a *Shudra* is entitled as undivided co-parcener to take by survivorship properties of the co-parcenary on the death of the legitimate son, Mr. Justice Nanabhai Haridas, differing from Mr. Justice Melvill held, on a consideration of the Hindu Law texts on the question, that he is so entitled and his judgment was upheld on appeal by a Full Bench of the Bombay High Court. In the course of his judgment he put the matter clearly thus: "While admitting, therefore, that the position of a *dasiputra* in a *Shudra* family does differ in important particulars from that of an *aurasputra*, I am not prepared to allow that the former is not a member of the family at all, nor that he is not a co-parcener, and not therefore entitled to succeed by right of survivorship. His legal status as a son is unquestionably recognized, and accordingly he inherits from his father even before the latter's widow; and if there are *aurasputras* of his father, he succeeds to the father's estate jointly with them. He is clearly, therefore, their co-parcener. That he is their brother, not only in the popular, but also in the legal, acceptation of the term, is evident from the *Mitakshara*, where they are spoken of both by *Yajnyavalkya* and *Vijnaneshwara* as his "brethren" and "brothers."

He was one of the first judges to point out that a married woman under the Hindu law has more rights than a married woman under the Common Law of England. In the case reported in I.L.R. Bombay, 121, the question was whether or not a Hindu wife who lives separated from her husband is liable for debts contracted by her. He pointed out in the course of the judgment: "A Hindu is not on account of her sex absolutely disqualified from entering into contracts" and he discussed elaborately the Hindu Law texts on the question. On the vexed question of ante-adoption agreements Mr. Justice Nanabhai Haridas took, as early as 1874, the view which has ultimately prevailed. In the case of *Chitko vs. Janaki* reported in 11 Bomb. H. C. 199 the ante-adoption agreement was by the adopting widow with the natural father of the minor boy given in adoption; and the stipulation was that the widow adopting should have the life estate, maintaining and educating the boy; the deed of adoption recited: "The provision of law or *Shashtra*, should there be any, that when a son has been adopted, the mother cannot have any proprietary right over her estate should not affect this transaction, for the boy has been adopted on this stipulation only, though he should have no right whatever during my lifetime." The Judge found that but for the mutuality of understanding on this stipulation the boy would not have been adopted at all. Nanabhai Haridas, observed in the course of his judgment:

"Admitting for the sake of argument that it could not, how can it be consistently urged that the boy acquired any rights at all in the family of his adoptive mother? That stipulation is an essential part of the contract of adoption in this case.....If it is void the whole contract is affected by its invalidity. If it is merely voidable, the plaintiff must

either acquiesce in or repudiate his natural father's act as a whole. To allow him to acquiesce in one part of it and to repudiate in another would be to enable him to perpetrate a fraud upon his adoptive mother by disappointing the expectations raised in her by that act of which he desires to have all the benefit.....

It does not however appear in this case that the contract of adoption of which the stipulation in question was an essential part, was on the whole unsavourable to the minor. Besides it is a fallacy to suppose that for the purpose of giving in adoption the power of a father is only co-extensive with the power of a guardian. In the eye of Hindu Law when a man gives his son in adoption he would seem to exercise the power more like the power of an absolute proprietor than that of a guardian. Thus a millionaire by such gift, even though all his property be ancestral, transfers one of his sons to a family possessed of no property whatever the adoption once duly made so completely changes the boy's status that ever after he is regarded as the son of the pauper to whom he was given by his natural father without the least possibility of his getting back to his natural family."

महाराष्ट्र न्यायालय

One other decision on Hindu Law by Nanabhai Haridas J, may here be noted. The decision is reported in I. L. R. 13 Bom. 101. Two widows of a Hindu family quarrelled and one of them tried to evict the other from the family residence. Haridas J. pointed out :

" We cannot allow it to go forth as good law that any disagreement between two widows of a family can justify the eviction of one of them from the family residence ; it would always enable one of them by picking up a quarrel to eject the other ; and the occasions for doing so are by

no means rare even in a well-governed family ; and according to Hindu notions the respondent who is junior in rank is bound morally at all events to respect and obey her (the appellant)".

On the question whether the doctrine of superstitious uses should be imported into Hindu Law, Mr. Justice Nanabhai Haridas sitting with West, J. took a very liberal view. It was decided in Bom. H. C. R. 214, that the English Law relating to superstitious uses does not apply in the case of Hindu religious endowments. His famous judgment sitting with Justice West on the Right of worship in temples and jurisdiction in caste matters is of more than ephemeral interest in Hindu Law.

Four persons of the Chitpavan caste brought a suit in 1876 alleging that they and a number of their caste, in common with certain other castes, possessed the exclusive right of entry and worship in the sanctuary of a temple, and that the defendants, members of the Palshe caste, not being of the privileged castes infringed that right in 1871 and thereafter by entering the sanctuary and performing worship therein. They prayed for a declaration of their right and an injunction restraining the defendants from interfering with it. The defendants contended *inter alia* that the suit as constituted was not maintainable ; that the question was a caste question within the meaning of Section 21 of Regulation 11 of 1827, and not, therefore, within the cognizance of the Civil Courts ; and that the suit was barred by the law of limitation. The judgment of the Court was delivered by West, J. :—

"Such a suit is not barred by limitation merely because the first and specified may fall beyond the term of limitation. Intrusions and acts of worship,

whether rightful or wrongful, are not continuous like possession and there is not any provision of the law of limitation which prevents the establishment of a right connected with worship, or a religious institution, merely because the first interference with it may have occurred more than three or more than six, or twelve years before the institution of the suit. If the acts of worship, or other proceedings of the defendants, in such a case have been so often repeated, and so consistent, during a long period that a presumption of a legal foundation for them fairly arises, they may properly be defended on such a presumption. A long continued and undisputed practice is to be referred, if it can be referred, to a lawful origin. In such a case as the present, proof in this way of a right exercised by the defendants would, so far as it went, disprove the exclusive right set up by the plaintiffs; but this would be a conclusion standing quite apart from limitation.

* * *

"The case of Jenkins *vs.* Robertson (1) is instructive in this respect and indicates that it may be consistent with general principles that certain judicial proceedings taken by, or against, a select number as representing a large class may, if fairly and honestly conducted, bind or benefit the whole class. Here the plaintiffs say they were personally injured by a pollution of their shrine in a way which the Civil Courts can readily prevent. They could properly claim protection on making out a case. If there is anything in the proceedings which has prevented the plaintiffs and defendants from being really representatives of the Chitpavans and Palshes, that can be shown in another case."

* * *

"Now the rights connected with the religious foundation, in the absence of any code of rules laid down

by the founder or the sovereign power have to be sought in the practice of the institution. What has long been done is presumed to have been rightly done. The evidence on that subject has led the Assistant Judge to the conclusion that the right of exclusive worship set up, as against the defendants, by the plaintiffs has been proved, and that the contradictory right set up by the defendants has not. This right is one which the Courts must guard as otherwise all high-caste Hindus would hold their sanctuaries and perform their worship, only so far as those of the lower castes chose to allow them. We, therefore, reverse the decrees of the Courts below, and award the relief sought, with all costs, to the plaintiffs."

The reported judgments, however, do not convey adequately the greatness of Justice Nanabhai; for, unlike the generality of Judges, Mr. Nanabhai Haridas was more anxious to decide rightly the cases that came before him than to write elaborate judgments displaying legal erudition. But a good idea of his position as a great Judge can be obtained from the fact that in the estimation of contemporary Indians he was counted along with Mr. Muthuswami Ayyar of the Madras High Court and Mr. Dwarkanath Mitter of the Calcutta High Court as one of the three able Indian Judges of that generation.

Mr. Nanabhai Haridas was equally at home with Criminal Law and Procedure and with Civil Law and with the revenue systems peculiar to different parts of India. In an earlier case in 11 Bom. H.C.R., 120, he points out:

"The object of a trial in every case is to ascertain the truth in respect of the charge made. For this purpose, it is necessary that the Court should be in a position to estimate at its true worth, the evidence given by each witness; and nothing that is calculated to assist it in doing so ought

to be excluded unless, for reasons of public policy, the law requires its exclusion."

In another case in the same report where the question was whether by an agreement to avoid litigation any wrongful loss was caused to the Government, he said :

" It is sufficient for us to say that we are not disposed to regard litigation as a machinery invented for the benefit of the revenue or to consider that avoidance of litigation is a wrongful loss to the Government within the meaning of the Penal Code or in any other sense."

As Government Pleader, Mr. Nanabhai Haridas appeared along with Messrs. Lathem, Leith and Jardine in the famous case of *Bhuskarappa vs. the Collector of North Kanara*. In the earlier case of *Vykuntha Bapuji vs. the Government of Bombay* also he appeared with Mr. Budrudia Tyabji as his junior counsel and discussed the Muli tenure and Kumri cultivation in Kanara. The question in these two cases involved an elaborate examination of the nature of the peculiar tenure prevailing in Kanara and known as Muli tenure. Mr. Haridas's intimate knowledge of Hindu and Muhammadan Law and of the revenue systems under the Moghuls as well as his wonderful grasp of the fundamental principles of tenure contributed largely to the learned and elaborate judgment of West, J., in the latter case extending to over 300 pages of the authorised series of the Indian Law Reports.

His cross examination was of such a searching and fiery character that even a man like Mr. T. C. Hope (former Collector of Surat and some years later member of the Viceroy's Council) once hopelessly broke down under his terrible fire.

In these days when a strong agitation is made that Hindu converts to Muhammadanism like the Khojas and the Cutchi Meemons of Bombay, the Mappillahs of Malabar and the Lubbaies of South India should be governed not by Hindu Law but by Muhammadan Law as regards inheritance and kindred matters, it is interesting to note that as early as 1875, Mr. Nanabhai Haridas raised this question and contended though unsuccessfully, that the Khojas could not be governed by the Hindu Law of inheritance.

The Judges of the Bombay High Court were among others consulted about Mr. Ilbert's Native Jurisdiction Bill proposing to confer on native Judicial Officers the power of trying European British subjects in 1883. The following Minute by the Justice Nanabhai Haridas shows that he held strong views against any distinction being shown in judicial matters on the ground of caste or creed or race.

"I am unable to agree with the Acting Chief Justice (L. H. Bayley) in his opinion on this Bill. He denies "that a native judge or magistrate in the mofussil, whether a Civil servant or not, is fit to try a European British subject."* * * In considering this matter one must not overlook existing facts. Every such judge or magistrate in the mofussil already has power to try Frenchmen, Germans, Italians, Greeks, Russians—in short all Europeans, except those who are British subjects. For years he has exercised it in a perfectly satisfactory manner. I am not aware of any instance in which he has shown his incompetency in the exercise of it. In principle what difference is there between the two classes of Europeans that renders such a judge or magistrate competent to try one of them, and at the same time incompetent to try the other? Besides, native magistrates in the Presidency towns have for years possessed the power of trying both classes of European

offenders. If competent to exercise such power in the Presidency towns, it is difficult to see how they become incompetent when transferred to the Mofussil, and competent again when re-transferred to the Presidency towns. The present state of the law on this subject is utterly indefensible. A judge's fitness for his post does not depend in the least upon the colour of his skin or upon the nationality of the prisoner to be tried, or upon the place where the Court is held; and any invidious race distinctions ought not to be allowed to disfigure the Statute Book a day longer than may be absolutely necessary.

"If a fear is really entertained in any quarter that the very presence of a native on the Bench will lead to increase in the practice, said to be very common in this country, "of bringing false charges upon suborned evidence against persons of a different race whom it may be desirable to injure or get rid of" such fear is, to say the least, most unreasonable. The presence on the Bench of native Magistrates in the Presidency towns has not led to any such results. There are Hindu Magistrates in the Mofussil daily trying cases in which the accused are Mahomedans and *vice versa*; and again there are both Hindu and Mahomedan Magistrates trying cases in which the accused are Europeans (other than "European British subjects") as well as persons of other alien races. But there is no warrant for asserting that perjury and subornation of perjury and false charges have increased there in consequence.

"I do not think there is much in the argument, which finds favour with some, that a native Judge or Magistrate is incompetent to try European offenders by reason of his ignorance of European "manners, customs, and habits of thought;" and that two or three years' residence in England is not likely sufficient to remove that ignorance in the case

of a native civilian. This argument evidently rests on the assumption that no judge is competent to try a prisoner with whose "manners, customs, and habits of thought" he is unacquainted. Now, can it be truly predicted of European judges and magistrates, whether in the Mofussil or in the Presidency towns, that they are acquainted with the "manners, customs and habits of thought" of every prisoner whom they have to try? The fact is jurisdiction is not conferred at present upon this principle. It will not be difficult to find instances of European judges, some quite fresh from England, others with even less than two or three years' residence in India, and others again, even after much longer residence without any knowledge of a native language, of native "manners, customs and habits of thought" trying natives upon all sorts of charges. And yet who has ever thought of denying them such jurisdiction on that ground? What is perhaps of more importance is a knowledge of the "manners, customs and habits of thought" of the native witnesses, upon whose evidence the determination of the guilt or innocence of the accused depends; and it cannot justly be denied that, as regards that, a native judge or magistrate is much better situated than any European can be.

"With reference to the suggestion contained in the Chief Secretary's letter dated 17th April 1883, it seems to me that, in trying to remove an invidious race distinction by legislation, care should be taken to avoid, if possible, the creation of another. All trials before a Court of Session in the Mofussil are at present either by jury or with the aid of assessors, whoever the accused may happen to be (section 268, Criminal Procedure Code). If Europeans prefer the former mode of trial, the natives are by no means opposed to it; and Government, having the power

(section 269 of the same Code), may at once direct such mode to be adopted in all cases. In this way they will be conferring a boon which all Her Majesty's subjects will equally value. They will, at the same time, be removing another existing anomaly--different modes of trial in the Presidency towns and in the Mofussil. Education has made such progress in every part of India within the last thirty years as to justify a hope that no difficulty will be experienced in finding a sufficient number of competent persons to act as jurors, wherever a Court of Session is held. I am opposed on principle to the creation of special tribunals for the trial of any class of Her Majesty's subjects; but if Government deem it expedient to do so, there is no necessity for any new legislation on the subject. They already have the power, under Section 15 and 16 of the Criminal Procedure Code, to direct two or more magistrates in the Mofussil to sit together as a Bench, and to make rules for the guidance of such Benches."

His stern independence is also apparent in his minute on the subject of appeals to H. M's Privy Council, on the state of appellate litigation in the Mofussil of the Bombay Presidency, and on the existing law of special Appeals. He criticised the system with facts and figures and wrote against the incompetency of the District Judges and raw Assistant Judges who reversed the decisions of competent subordinate native Judges.

Mr. Haridas's minute to the Public Service Commission is a standing and enduring testimony to the fearless and independent spirit which characterised his public work no less than his official work. Indeed it was no small affair to pulverise and nullify the arguments and figures of such an influential man as Sir Raymond West.

One cannot do better than quote the words of the *Bombay Gazette* which rightly appraised the greatness of Mr. Nanabhai Haridas :

“ Mr. Nanabhai Haridas possesses many of the qualities which best suit a Judge. He is learned in the law and is a clear-headed and upright gentleman”. And the *Gazette* proceeded to refer to “ his legal acumen, gravity, independence, right principles, unassuming deportment and high moral character,—a combination of qualities rarely found in a single individual however liberally educated and well-circumstanced he may be.”





MAHADEV GOVIND RANADE

MAHADEV GOVIND RANADE

LIFE

TRUMPET, the baker's son, is sent to a grammar school, 'takes to his books, spends the best years of his life in making Latin verses, learns that the *Crum* in Crumpet is long and the *pet* short, goes to the University, gets a prize for an essay on the 'Dispersion of the Jews,' takes Orders, becomes a Bishop's Chaplain, has a young nobleman for his pupil, publishes a useless classic and a serious *Call to the Unconverted*, and then goes through the Elysian 'transitions of Prebendary, Dean, Prelate, and the long train of purple, profit, and power.' Sydney Smith's lively account of the prosperous career of the aspiring Britisher might be, *mutatis mutandis*, applied to the successful Indian youth. The subject of the notice was one of such successful youths. Instead of the absurd classical education in Sydney Smith's caricature, we have the cast-iron methods of the Indian system of education, and in place of ecclesiastical preferments, we have here the legal profession and its rewards.

The purely official side of Mr. Ranade's life has not much to arrest our attention. If Mr. Ranade had conserved his energies and been content with official successes, he would have had the reward dear to the official mind, and possibly have enjoyed greater power and accumulated a large fortune. He deliberately chose the better path, and he nobly spent himself in activities not of money-getting nor popularity-hunting sort. Hence, the sweet

savour of his fame with those that can appreciate him, and hence also the shaking of the head and the lifting of the brow of those that cannot make out his worth.

The facts of Mr. Ranade's life are of the most meagre sort. He was descended from a Mahratta family, members of which had served in one capacity or another in the Peishwa's court. His great-grandfather, Appaji Pant, represented the Sangli State at Poona. His grandfather, Amrita Rao, was a Mamlatdar in the Poona district, and his father was Head Clerk to the Mamlatdar of Niphad in the Nasik district.

He thus belonged to the middle class that enjoys the blessing that the sage prayed for—'neither poverty nor riches.' The advantages the class enjoys for doing the real work of the world are manifest. There is not laid on the men the crushing burden of poverty which uses up all energies in providing for the primal necessities of life. There are not the temptations and distractions of frivolity and self-indulgence which beset wealth. There are enough privations and sorrows to keep alive sympathies with the misery of poverty and ignorance, as also with the misery of well-to-do weakness.

He had also the advantage of inheriting proud political traditions. Whatever the views of the successful foreigner, there can be no question that the attempt of the Mahratta for the hegemony of the distracted Indian States is a thing to stir the patriotic blood of the Poona Brahmin. But for the untowardness of events, the Mahratta was in a fair way to front the Westerner in a fashion other than that he actually experienced. It is not altogether fanciful to ascribe much of the political activities that marked Mr. Ranade's life to the inspiration he derived from this 'process of nation-making' of which he has left a history.

Mahadev Rao was born on the 18th of January, 1842. He was nearly eleven before he began his English education. Earlier he went through the Vernacular School and imbibed that love of Mahratta culture of which we find evidence in his writings. Some of his most cherished ideas he owed to this study. We may refer, in this connection, to his lecture on *Hindu Protestantism* and to the chapter on *The Saints and Prophets of Maharashtra* in his *Rise of the Mahratta Power*. We may also refer to another incident recorded by Mr. Gokhale. On their return from the Amraoti Congress of 1897, Mr. Ranade roused him, without meaning to do so, by singing the *Abhangs* of Tukaram. "The voice was by no means musical, but the fervour with which he was singing was so great, that I felt thrilled through and through."

He joined the High School at Kolhapur in 1851 and studied there till 1856. Then he joined the Elphinstone Institution, as it then was, but now known as the Elphinstone College. There he came in contact with some of the best men in the educational line, with Sir Alexander Grant among others, and profited by opportunities of reading. He then laid the foundation of the wide culture for which he was remarkable in after-life. To the Hindoo village lad of hitherto restricted intellectual horizon, the limitless expanse of knowledge that opened out before him would have impressed him as the Pacific did Cortez —

When with eagle eyes
He started at the Pacific—and all his men
Look'd at each other with a wild surmise—
Silent, upon a peak in Darien.

Many are the stories extant of the width and depth of his studies as a student and subsequently as a fellow of his College and Professor. We hear of his utilising one vacation for careful study of all works in History in the College

Library. His special leanings were towards History and Political Economy. But he did not confine himself to these studies. He read largely books on Science, Philosophy, Drama and various other subjects. We do not find him as diligent a student of English poetry as his friend Telang was. He knew Shakespeare and Scott, but it was the broad humanity of these writers rather than the poetry and romance that attracted him. Referring to the popular estimate of his acquirements, he said there was very little to wonder at: "Very few men have those facilities of acquiring knowledge at their command as I had. Sir Alexander Grant was my teacher, and he was a great help to me in my pursuit after knowledge. The students of the present time are not fortunate enough to get such good teachers, and, consequently, they fall short of the mark." We believe that the laying on of hands is as efficacious in education as it is supposed to be in the consecration of bishops. Professor Butcher said in his 'Harvard Lectures': "As Life is something beyond Learning, so Personality is something beyond Learning. The teacher who leaves an impress on other minds is greater than the information he conveys." Happy the pupil that comes under the influence of such teachers. Ranade enjoyed that happiness.

If Sir Alexander Grant showed himself appreciative of the merits of his pupil, he could also be a stern disciplinarian, and that Ranade himself experienced. The fervid patriotism of his callow days led him into drawing a disparaging comparison between the British Government and the Mahratta rule. Sir Alexander Grant, according to Mr. Gokhale, sent for him, and, after pointing out to him the error of his views, said to him: "Young man, you should not run down a Government which is educating

you and doing so much for your people." And, to mark his serious displeasure, he suspended Mr. Ranade's scholarship for six months.

His diligent College career was crowned by brilliant academic successes. He gained his 'First Division' in his B.A. Examination of 1862 ; received the congratulation of Sir Bartle Frere in the Convocation of 1863 ; proceeded in 1865 to his M.A. degree ; received the Gold Medal for History and became a Fellow of the University in 1865. Next year he passed the LL.B. Examination with Honours.

With his appointment as Mahratti Translator in the Educational Department began his official career. A change to the Judicial Service in his own State of Kolhapur,--as Kharbhari at Akalkot, in right of his LL.B. degree, preceded his appointment as Professor of English Literature in his own College—Elphinstone. His success as a Professor was so great, his lectures were so attractive, that it is said it was no uncommon thing for his fellow European Professors to attend his lectures. The Educational Department could not keep him to itself. The profession of law with its wider scope for ambition and larger opportunities of usefulness exercised its spell, and Mr. Ranade succumbed to its charms, as many brilliant young men have before and since.

Talented and hard-working as he was, it is no matter for surprise that he advanced steadily in his professional career ; that he filled successively the position of Reporter in the High Court, Subordinate Judge, Presidency Magistrate, Judge of the Poona Small Cause Court, Special Judge under the Agriculturists' Relief Act ; and that he became finally Judge of the High Court—the *ne plus ultra* of official achievement possible for a citizen of India.

Apart from his official activities Ranade was the inspirer, the guide, philosopher and friend of all active workers for the good of the country. The principal promoter of the Sarvajanik Sabha, a prominent member of the Prarthana Samaj, the General Secretary of the Indian Social Conference, a prominent member and administrator of the Bombay Senate, Ranade showed that he fully realised the duties pertaining to men of his talents and position. His tongue and his pen, his time and his purse, he was ready to devote to all causes that made for the good of his country. This life of beneficent activities Ranade led till his very end. He died as he wished to do, working. Though reckoning according to the Indian standard, Ranade's life cannot be said to be a short one, still, in the dearth of men animated by the ideals and enthusiasms, of Ranade, we could ill-spare his inspiring presence, his practical sagacity, his ripe wisdom, his cheery optimism, and his loyalty to unpopular causes. It is, after all, futile to reckon the length of Ranade's days according to ordinary human reckoning. Men of his stamp

Live in deeds, not years, in thoughts, not breaths ;
 In feelings, not in figures on a dial.
 We should count time by heart-throbs. He most lives,
 Who thinks most, feels the noblest, and acts the best.

Ranade when he died on the 16th January 1901, had in this and the best sense 'lived most.'

RANADE AS JUDGE

Ranade joined the High Court on the 23rd November, 1893 and only in January, 1901, a few days before his death he applied for six months' leave on the ground of ill-health, preparatory to retirement. During the seven years and more that he sat on the High Court Bench, he administered substantial justice although he did not allow

the whole of his time to be engrossed by his judicial duties. It is remarkable how his judgments are entirely free from the influence of his decided views on social reform and political reconstruction. A member of the Madras Bar, lecturing on the Law Reports, said :—

Great reformer as he was he did not allow any of his ideas to influence his judgments. For instance when a question arose as to whether a re-married widow could give her son away in adoption he promptly said 'No' (Panchappa vs. Sanganbasava*) though he was an ardent supporter of widow marriage. His judgments give no indication as to his views on social or political life and questions of law are discussed in a wholly detached way. Sitting with Jardine and Parsons, both of them able Judges, he has written many sound judgments which, without their being anything specially remarkable about them have contributed to the orderly progress of the Law.

Justice Ranade was not an erudite Sanskrit scholar like Mr. Justice Telang who preceded him on the High Court Bench; and one cannot point out to a number of masterly judgments on Hindu Law as one can in the case of Mr. Justice Telang,—judgments, "which not only marshal authorities but also discuss the subject with an insight into the Hindu legal methods." The reason seems to be that Mr. Justice Ranade was not so engrossed with legal learning and apparently "his early drafting into judicial service somehow made law a subordinate interest in his life and he did not give the best in him to Law."

When the High Court first assembled after his death, Sir Lawrence Jenkins, Chief Justice, referred to him as "a profound and sympathetic judge, possessed of highest perceptive faculties and inspired with an intense desire to do right. His opinion was of the greatest value to his colleagues and his decisions will stand in the future as monuments of his erudition and learning." Mr. Justice Ranade, according to his biographer, Mr. Kellock, showed

* 1. I.I.R., 24 Bom. 89.

"great power in the unravelling of cases maintained to the end that reputation for ability which he had earned as a subordinate Judge." The judicial detachment from his own strong views on economic life and on social reform has already been pointed out. As a Judge, he was equally free from race feeling and class prejudice. When in 1893 Hindu-Muslim feelings ran high and cases came up to the High Court relating to the frequent frictions between the two peoples, this detachment from one's own personal views, which characterised Justice Ranade was highly appreciated. Again when anti-European feeling ran high and resulted in the murder of two Europeans in 1897, Mr. Justice Ranade had to deal with the appeals arising out of the trials for those murders and he exhibited as a Judge a singular freedom from personal predilections. A glimpse is afforded, through the Marathi biography of Mr. Justice Ranade by his widow Ramabhai, into the daily life of the great Judge. Awaking shortly after three o'clock in the morning it appears that he would sit up in bed till 5-30 singing the devotional *abhangs* of Tukaram and of Namadev and reciting Sanskrit stotras. By six o'clock he would be ready for work at his office table where he worked till 9-30. After breakfast, he used to take a little rest and then start for the Court at about 10-30. After the Court work was over at five o'clock he used to have an hour's walk and then settle down to work again in the evening at 6-30. He was an exemplary correspondent, answering all his letters on the same day as he received them. After supper he used to spend an hour or so with the members of his household and then retire to bed where he used to read till 10-30 or eleven o'clock. On Court holidays, he was even more busy. When at Poona he was responsible for the starting

of many of the progressive movements in that City. He joined the Prarthana Samaj which was just then started by Mr. Modak; and it was largely through his influence that the old Sarva Janik Sabha was revived and although at first the Government of Bombay was suspicious of the activities of the Sabha, in course of time the suspicion was converted into admiration of the good work done by the institution under the influence of Mr. Ranade.

In 1886 he was appointed to the Committee constituted by the Government of India to examine into expenditure and suggest ways and means for retrenchment; and it is noteworthy that Mr. Ranade, in his Minutes of dissent to that Committee's Report, protested strongly against retrenchment proposals in the departments of Law and of Education. His varied and many-sided activities at Poona justified his title as the "Uncrowned King of Poona," and one could understand the wrench caused to Mr. Ranade by his appointment as High Court Judge at Bombay. But what Poona lost Bombay gained.

THE SCHOLAR

Mr. Ranade did not allow his arduous duties as a High Court Judge to diminish his enthusiasm for work in the political, literary, religious and economic spheres of life. He revived the Cold Season Lectures at the Bombay Union Club which had been discontinued after the death of Justice Telang. He took up the task of writing the history of the Marathas which Mr. Telang had planned to do in collaboration with him. The first volume of the history "The Rise of the Maratha Power" was published in 1900. Two other historical essays were published by him, *viz.*, 'Mints and Coins of the Maratha Period' and an 'Introduction to the Satara Raja's and Peshwa's diaries.' He took an active part in the Prarthana Samaj at Bombay

and delivered many sermons on the teachings of the Upanishads, of the Gita and of the songs of the Marathi saints. In his book "The Philosophy of Indian Theism," he has ably interpreted the theistic conception of the Universe contrasting it with the conception of materialism, atheism and agnosticism. His other works on Theology are: "A Theist's Confession of Faith" and his "Review of Dadoba Pandurang's Reflections on the works of Swedenbourg." He was regular in attending the Annual Social Conference in each of which he played an active and important part. It was his idea that the step-motherly treatment of the Indians by the Government was a sort of divine retribution for the unjustified treatment of the depressed classes by the higher castes in India. This idea was taken up by his disciple Mr. Gokhale and through him by Mahatma Gandhi who made the removal of untouchability a fundamental plank in the political and social reconstruction of Indian life.

Although Mr. Ranade left his place as a Professor at the Elphinstone College for judicial service, he continued to take a keen interest not only in history and economics, but also in the development and growth of the Marathi Literature and generally in all matters pertaining to education.

SOME FAMOUS JUDGMENTS

In spite of his achievements in other departments of activity, Mr. Ranade's keen sense of duty would not allow him to be anything less than a good and eminent Judge. His achievements consequently as a Judge are much above the ordinary. His judgments show considerable industry and a good grasp of the fundamental legal principles; and if his judgments do not comprise elaborate and scientific disquisitions of the legal principles appertaining to the case, it was due not so much to a lack of legal equipment

or of intellectual appreciation of legal problems involved, as to his desire to confine himself to the point and not hamper the Reports with *obiter dicta*. That he could, if he desired, review the original texts on Hindu Law with considerable ability and expound the legal principles underlying them clearly and forcefully is seen from his masterly judgment in *Vithal Rao Krishna vs. Rama Rao Krishna*, reported in I.L.R., 24 Bom. 317 from which the following passages are extracted. It is interesting to note in passing that that case was argued by Mr. Maepherson assisted by Mr. Setlar for the appellant and by Mr. Branson assisted by Mr. (later Sir Narayan) Chandavarkar for the respondents : --

I have now to consider how far the balance inclines one way or the other. The question is to be decided by special reference to the Bombay authorities, the *Mitakshara* and the *Mayukha*. On the Bengal side, the distinction between whole and half blood obtains in the case of brothers and nephews as also grand-nephews and uncles and grand-uncles and their two descendants. The test adopted there is of spiritual benefit, and not of propinquity through possession of common particles or blood relations. It is admitted that, as far as the *Mitakshara* and *Mayukha* are concerned, only the brothers and their nephews are expressly mentioned relations among whom preference of the whole to the half blood obtains. . . . Propinquity may be understood (1) as being either propinquity by descent in line or degree through common male ancestor, or (2) propinquity may be by descent through common mother, (3) propinquity may also be by identity of caste or (4) it may be by spiritual benefit. This last may be left out for the present. But the first three are important. The view, on this side, of text writers has been that the *Mitakshara*'s preference of the mother to the father was due to her being common in class with her son which was not always the case of the father when he could marry women of other caste. It is in this sense of propinquity that both *Subodhini* and *Balambhattacharya* have understood the *Mitakshara* passage in chapter II, section 3, para. 3, which refers to the *sudharan* and *asadharm* doctrine criticized by *Mayukha*; and *Balambhattacharya*, one of the commentators noted above, does not accept the force of the arguments. As between brothers of the whole and half blood referred to chapter II, section 4, paras. 5 and 6, the propinquity is by descent from the same mother. As regards *gotraja* relations, the propinquity is through descent from a common male ancestor in line and degree, (chapter II, section 5, paras. 1 to 6). . . .

Taking the Mitakshara as its own interpreter, it is, however, clear that Vijnaneshwar did not understand propinquity in the same sense in all these cases. In the case where preference is given to a mother over the father, the propinquity is obviously of a different kind from what obtains in the case of full and half brothers born of different mothers. When gotraja relations of nearer degree succeed those who are remote in descent from the common male ancestor, the propinquity is obviously different from either of the two noted above. . . . Propinquity, therefore, though it is a sufficiently safe guiding principle in a large number of cases, does not cover all cases of inheritance, and even where propinquity is the guide, the propinquity is not of the same kind. The fact appears to be that the reasons stated by the author of the Mitakshara are not to be too logically interpreted and applied rigidly in all cases. The reasons vary with the exigencies. The commentators on Mitakshara, as also writers of the Srutit Chandrika, Viramitrody, Saraswati Vilas and Mayukha, have taken objections to these reasons and their artificial character has been recognised by the Courts in several cases. The conclusions laid down derive their efficacy chiefly because they correctly state the accepted usage. There was this usage of preference of full to half brothers laid down in the text of Vrihaspati, Deval and Manu in certain parts of India (Colebrook Book V, chapter 8, section 1, placita 404, 422, 437, section 2, 513), and the author of the Mitakshara had to recognise it and did his best to harmonise the usage with previous texts, and too much stress, therefore, should not be laid on the reasons given, and certainly, in the absence of similar express texts in favour of uncles or other relations, no extension of such usage in opposition to general principles should be permitted merely on the strength of the reasons given by the Mitakshara. The doctrine of propinquity applies in different forms to different circumstances, and it was so variously applied by the author of Mitakshara himself. It is, therefore, not a valid argument to infer from the case of brothers and nephews that the preference there given should prevail in the case of other gotraja relations.

This acute examination of the doctrine of *Pratyasatti* is supported by a consideration of the other authorities and of the Mayukha in particular and it is interesting to note how Mr. Justice Ranade goes to the probable origins of the peculiar custom of the full brother excluding the half brother from inheritance in Hindu Law.

On general principles also there is an obvious distinction which has some reason in human nature for its existence in the case of full and step brothers and their sons. Dissensions between sons by different mothers are a normal feature of Hindu family. As the

chain grows longer, the occasions and reasons for this discord grow less with every remove. Therefore, the preference of full to half blood is with good reason confined to brothers and nephews. There may be room for similar distinctions in the case of grand-nephews, but when we go to the ascending line, the reason for apprehending absence of love ceases to exist, and it was, therefore, natural that in the case of the ascendant gotrjas the text writers and commentators did not distinguish the claims of the full and half relations.

The following is the concluding passage of the judgment of Mr. Justice Ranade in the case *Panchappa vs. Sanganbasawa* in which he denies the right of a widow who has remarried, to give in adoption her son born by her deceased husband. Ranade J. considers the provisions of the Hindu Widows' Re-marriage Act of 1850 and holds that those provisions do not reserve the power to give in adoption. The passage is as follows:—

The right to give a boy in adoption is a right of disposition, a portion of *patria potestas* which comes to the widow by reason of her connection with her deceased husband's estate, and being a part of the rights and interests she acquires as a widow, it is included within the provisions of sections 2 and 3 of the Act, and is not a reservation which the Act concedes to the widow.

Thus it will be seen that although Mr. Ranade's achievements in other departments of life have overshadowed his achievements as a Judge, still considered merely as a Judge his achievements justify us in including him as one of the eminent Indian judges. In the all comprehensiveness of character and interest Mr. Ranade resembled Raja Ram Mohan Rai; like that illustrious pioneer of the eighteenth century Mr. Ranade was also scholar, patriot and reformer all in one. In the breadth and catholicity of his views, in his religious fervour and reforming zeal, in his loyalty to noble ideals, the spirit of Raja Ram Mohan Rai might be considered to have been reborn in Ranade. Ranade too dominated his age by his strength of character and sweet reasonableness. The intelligentsia of his time turned to him as to a magnet; and his teaching and

example made a profound impression on the men and women who carried out his message and transformed and purified character for Indian public life; and in everything he said or did, he exhibited a judicial frame of mind and an equanimity of temper; we may therefore say rightly that he was not merely by accident of office but by nature Judge Ranade.

TEACHINGS

However, it is not as an eminent judge alone that Mr. Ranade would be remembered by future generations of India. He was fired by an unquenchable thirst for bettering his fellow countrymen.

Ranade's life was not aimless as the lives of most men are who 'eddy about here and there and are hurled in the dust, striving blindly, achieving nothing.' His was fired by 'an ardent, unquenchable thirst' of bettering his fellow-countrymen. He was among those 'who strove not without action to die fruitless.' His path was deliberately chosen—the path of advance.

We shall endeavour to give some outline of the leading ideas that influenced Ranade's life-activities. We shall, for this purpose, draw freely from his published writings. The most striking feature of Ranade's activities was their many-sidedness. This was due to the fact that Ranade realised fully the complexities of society. His conception of it was the same as Aristotle's. It is to promote not merely life, but noble life. Ranade would have subscribed to the same idea amplified by Burke in his description of the State: "The State is a partnership in all science, in all art, in every virtue, and in all perfection." With such high ideals before him no side of social well-being could be ignored. After referring to some features of what he

called 'Telang School of Thought,' he says that they all agreed

in holding that the work to be accomplished is not one-sided work. The liberation that has to be sought is not in one department of life, or one sort of activity, or in one sphere of thought, but it is an all-round work in which you cannot dissociate one activity from another. Take the improvement of our physique alone. To do that you may take many decades—you may take centuries. The great failing off that has taken place during many centuries as the result of false ideals of life, evil habits and bad institutions can only be counteracted by persistent efforts to combat the mischief.

But, besides physical development, the other duties that have to be performed are of even still more peremptory character. And what are they? They are the improvement of the social surroundings about us. * * * There was the work of religious regeneration to be attended to. Not that we need go to a foreign country and borrow our faith from foreign masters. Spiritual life was developed to the highest perfection, not merely in writings but in the actual existence of great men who flourished in the past. We have to revive that life in us; we have not to set up a particular doctrine which separates one friend from another, and one church from another. * * *

Next there is the economical and industrial movement. Our industries are in the same condition in which they were when man first entered on the agricultural stage. Millions of people are working and toiling all the year round in a most desultory fashion, managing to eke out their living in some form or other. Labour is unskilful, capital is scarce and without organisation, our material resources either are not utilised or undeveloped. * *

We have, lastly, to learn to take interest in the political well-being of our people, and though it is thought to be a very easy lesson to learn, it is one which is most difficult to accomplish, unless co-ordinated with it we secure the regular development of other useful activity in us.

The close connection of the different kinds of social activities was ever prominent in Ranade's mind. "There is an interdependence between the parts, so that it is not possible to do justice to one without doing justice to the other also." This lesson, Ranade said, was difficult to learn, but this Telang constantly kept in view. Ranade belonged to the same school, and he enforced the lesson again and again. In his address to the Provincial Social

Conference, Satara, 1900 (p. 202, *Essays on Religious and Social Reform*), Ranade said :

You cannot have a good social system when you find yourself low in the scale of political rights, nor can you be fit to exercise political rights and privileges unless your social system is based on reason and justice. You cannot have a good economical system when your social arrangements are imperfect. If your religious ideals are low and grovelling, you cannot succeed in social, economical or political spheres.

In the course of his Essays on "Religious and Social Reform," Mr. Ranade seeks to strengthen the position of the reformer by putting the case as one of a return to the truer ideals of ancient India. He was for raising the marriageable age of boys and girls, for widow marriage and for the removal of the caste restrictions. He derives support from an examination of the *Sutra* and the *smriti* texts on the proper age for marriage of the Hindus. He supports his position on the question of widow marriage also by resorting to the Vedic authorities. In his Essay on Vasishtha and Viswanitra he points out that the tendency of ancient India was in favour of the removal of caste restrictions. And in spite of his ardent enthusiasm for speedy progress, Mr. Ranade was too much of a historian not to know that the safe road to progress lay in proceeding step by step, taking the masses with the movement and that it was necessary to maintain an unbroken continuity with the past. In his inaugural address at the Annual Social Conference at Poona, he explained his creed thus :

I profess implicit faith in two articles of my creed. This country of ours is the true land of promise. This race of ours is the chosen race. It was not for nothing that God has showered His choicest blessings on his ancient land of Aryavarta. We can see His hand in history. Above all other countries we inherit civilization and a religious and social polity which has been allowed to work their own free development on the big theatre of time. There has been no revolution, and yet the old condition of things has been tending to reform itself by the slow process of

assimilation. The great religions of the world took their birth here, and now they meet again as brothers prepared to welcome a higher dispensation, which will unite all, and vivify all. India alone, among all the countries of the world, has been so favoured, and we may derive much strength of inward hope from such a contemplation. Change for the better by slow absorption—assimilation not by sudden conversion and revolution—this has been the characteristic feature of our past history. We have outlived Buddhism, and we conquered it by imbibing its excellencies and rejecting its errors. We have outlived Mahomedan repression, and have conquered it by being the better for the hardy discipline in the suffering we went through under its domination. The old world looseness of the relations of married life and of affiliation of sons has been purged from us. The old world slavery of the Sudra millions has been quietly abandoned, the erstwhile Sudra classes have been elevated into Vaishyas, our Brahmins have become warriors and statesmen, Kshatriyas have become philosophers and guides, and our Vaishyas have become our prophets and saints. The old world fetishism has given place to idolatry. The old world polytheism has given place to a full recognition by the humblest of our people of the unity of the godhead. Our voracious love of flesh and wine had made room for an ideal of abstinence, charity, and mercy, unknown all over the world. The old sacrifices of man and beast have given place to the holier sacrifices of the passions in us. The patriarchal forms of society have made room for communal organizations all over the country. The sanctity of woman's place—if not as wife, yet as mother, daughter, and sister,—has been realized in a way unknown before or elsewhere.

All these changes have been brought about consciously or unconsciously without any violent struggle, and without breaking up the continuity of the old life. If the guiding hand of God in history has so favoured us hitherto, why should we despair now when we have been brought under influences of a still more elevating kind?

The true test of progress must be seen in signs which show that this vast mass of humanity is being vivified by the sacred fire which burns only to purify and elevate. There are those who think that no such signs can be seen, and that our highest duty is to separate ourselves from the decaying mass and look to our own safety. I have battled with this idea for the last 30 years and I shall protest against it, till life is spared and my voice permits me to speak. The Hindu community is not a festering mass of decay and corruption. It is no doubt conservative to a degree, but that conservatism is its strength. No nation has any destined place in history which changes its creed and its morals, its customs and its social polity, with facility of fashions. At the same time our conservatism does not prevent the slow absorption of new ideas and the gradual assimilation of new practices.

Another characteristic of Ranade's teachings that 'leaps to the eye' is his insistence on the historic continuity of the reforms he worked for. Whatever be the nature of the reform he advocated, whether it be social, economic, political, or religious, he was anxious to assure himself and the public that we are not cutting ourselves off from old and safe moorings. 'To take the reforms in the order stated :

Social reform was with him a return to the truer ideal of earlier days. To mention only a few planks of the reform platform, Ranade was for raising the marriageable age of boys and girls, for widow-remarriage, for breaking down the caste restrictions. In his advocacy of these reforms he calls the attention of his compatriots to the practice that obtained in Hindu society in the earlier days, and shows how there has been a falling away from the better path. The second of Ranade's Essays on 'Religious and Social Reform' examines the *Nutra* and *Smriti* texts on the age of Hindu marriage. He next goes into the question of Vedic authorities and Widow Marriage. The essay on *Vashistha* and *Vishwamitra* treats of the fluidity of the caste restrictions in the earlier days. In each of these cases Ranade makes out that the reforms advocated have the support of our sages.

In the matter of political and economic improvement, again, Ranade was for proceeding on the safe road of past achievement. His *Essays on Indian Economics* furnish full evidence of his anxiety to be guided by the lessons of history. In the absence of historic mile-posts nearer home, he has an eye for what would serve as guidance in the history of other peoples. *Netherlands India and the Culture System* brings out "the difference between the British Indian system

and the Netherlands method of rule,—the latter being conservative and protective, while the former is based on modern ideas of equality and is worked out by a much larger foreign agency than is found necessary in the Dutch Indies." When 'Local Government' came to be a question of 'practical politics,' Mr. Ranade "reviewed the subject historically in its development in the free and self-governed communities of Europe, where these institutions have been long naturalised to the soil, and have influenced the political and economical arrangements in various forms and degrees, so as to serve at once as a warning and an example to this country." The emancipation of serfs in Russia is availed of to enforce the much-needed lesson in India that the ryot must be emancipated and set on his feet and "inspired with a sense that the land is as absolutely his as his home or cloths," and that this magic of property would make a new man of him, make him thrifty and careful of running into debt. Prussian Land Legislation is compared with the Bengal Tenancy Bill, and the retrograde tendency of the latter is shown.

In religious reform, too, Ranade shows the same sense of historic continuity.

His essays on 'The Philosophy of Theism,' 'Hindu Protestantism' and a 'Theist's Confession of Faith,'—all show his anxiety to connect his own teaching with the teachings of the past.

A pride in the achievement of the Indian intellect, an abiding faith in the destiny of India, animated Ranade's best efforts. The past we have to be proud of is not the immediate past which is the parent of the far from agreeable present.

It is not the immediate past of which we are to feel proud but of the past of our great ancestors in whose time our philosophies

were developed, our literature and sciences grew up, and our people went to foreign lands, far off to Java, to the East, and far away beyond Mongolia to the North. For these times we ought to have intense reverence. The more immediate past has brought us to our present position and stranded us into the difficulties in which we find ourselves.

Ranade insisted that

we should be unworthy of ourselves if we are not hopeful with our traditions which transcend the tradition of every other nation in the world. You may take the map of Asia, Europe, Africa, or America, and you will find that there is no other country in the world which presents such a continuity of existence over such a long period of time. Races and creeds have risen, thrived and decayed in other lands, but India is favoured, for, notwithstanding its abasement in many other particulars, the people of this country have been preserved from dangers, as though they were a people with a special mission entrusted to them. We, of the present, or those of our ancestors of the immediate past, may not be worthy to bear the standard of that mission, but still there is the fact that we represent a continuity of creed, of tradition, of literature, of philosophy, of modes of life and of forms of thought, which are peculiar to this land, and which have been carried to other countries by our illustrious ancestors in the past from this land. * * * It cannot surely be for nothing that this particular favour has been shown to us under Providential guidance. If the miraculous preservation of a few thousand Jews had a purpose, this more miraculous preservation of one-fifth of the human race is not due to mere chance. We are under the discipline of a high purpose.

The reader cannot but be reminded of Mazzini's belief in the mission of Italy. According to him, each nation has some distinct and specialised service to render to humanity. "God has written one line of his thought on the cradle of each people." "Special interests, special aptitudes, and before all, special functions, a special mission to fulfil, a special work to be done in the cause of the advancement of humanity, seem to me the true infallible characteristics of nationalities." It is interesting to recall that the later sixties of the last century coincided with the intellectual adolescence of Ranade, and they were marked by the triumphs of Mazzini and Bismarck,

of resurgent nationalism in Italy and Germany. Ranade's zeal for the success of the nation-building movements of the Social Conference and the Congress was kept alive by the ideal of a strong and united India, a more or less autonomous and federated India. In his *Rise of the Mahratta Power*, the author refers to the future of "a Federated India, distributed according to nationalities, and subjected to a common bond of connection with the Imperial Power of the Queen-Empress of India." Such an ideal has been pronounced not unworthy of encouragement by Mr. Charles Lewis Tupper, of the Indian Civil Service, and it would eminently become 'the mother of great nations in two quarters of the globe.'

Though Ranade recognised the preciousness of immaterial good, he realised that the advance of India was impossible without attention to the economic needs of the country. He was impatient of doctrinaire views that did not take account of details, of local conditions, which form the very essence of safe reasoning in such a science. His lecture on Indian Political Economy, delivered in the Deccan College, Poona, was, in its way, as severe on the orthodox views of the popular economists as Ruskin was on them in his *Unto this Last*. After giving a historical exposition of the subject, Ranade dwells on the nationalist views of List the German economist.

The permanent interests of nations are not always in harmony with the present benefit of individuals. National well-being does not consist only in the creation of the highest quantity of wealth measured in exchange value, independently of all variety of quality in that wealth, but in the full and many-sided development of all productive powers. The nation's economic education is of far more importance than the present gain of its individual members, as represented by the quantity of wealth measured by its value in exchange.

Then follows a brief account of the followers of List and of the historic method. The Indian aspect of the science is then dwelt upon. The territorial division of labour of the orthodox economists would assign to the torrid zone the role of producing raw materials and to the temperate zones the role of transporting and manufacturing them. Respecting this view Mr. Ranade states there is no inevitable necessity which justifies a line of separation which has a tendency to accentuate natural deficiencies and make them a source of permanent weakness. The history of the past is against such a view. The skilled products of India excited the jealousy of ancient Rome and modern England. The natural fitness of things requires that manufactures should spring up where the raw materials grow. The advantages of steam machinery and cheap coal and iron cannot remain the monopoly of the temperate regions.

In the matter of distribution, the Government view of rent is connected with the theory of unearned increment. "That fits in only where landed property continues for generations in the possession of the same family. If the land changes hands, the incoming purchaser buys it at its market value, and he enjoys no unearned advantage, and the so-called rent is but a return by way of fair profit on his investment." The theory that rent does not enter as an element of price does not apply when all occupied land has to pay monopoly rent to the State landlord. Fixity of tenure as against Government no less than against Zemindars and the repudiation of the *laissez faire* theory are views favoured by the new school of Political Economy. Ranade describes with sympathy the Prussian Land Legislation, which had the effect of :

abolishing all encroachments on personal freedom; removing restrictions on rights of property in land; relieving the peasants from being the sole class liable to the payment of State Charges; buying out the rights of the lords of manors over the services of their peasant serfs and turning these serfs into free proprietors; committing the real charges and services; consolidating rights of common; and facilitating the improvement of farms and other landed properties.

The duty of the British Government with regard to manufactures is clear:

Government owns the lands, the mines, and the forests. It is also the largest consumer and the largest capitalist and manufacturer in the country. There is no question of protective duties here. The natural resources are in unmeasured abundance, and the natural demand is increasing every day in volume and urgency. Organised skill and direction are the only needs of the country, and these the Government possess, or can command in a way which makes it their duty to step in and assist the development of local enterprise, for which the necessary capital will be forthcoming in this country, if only the risks of such employment are reasonably assured against (p. 179, 'Indian Economics').

It will be patent to the most superficial student of his *Essays on Indian Economics** that Ranade was ever ready to avail himself of all possible opportunities to impress on his countrymen the need to promote the diversity of occupations by increase of manufactures, to check the growing ruralisation of the people as the result of the decay of local industries and of the men being in consequence thrown more and more upon agriculture, to promote emigration of the adventurous Indians, to advance local government, and in every way to make the Indians more and more resourceful and economically efficient.

Society with him was an organism, and to effect any reform there must be a proper study of the disease--there must be a historical study of the origin of the evil. In

* *Essays on Indian Economics*. By Mahadev Govind Ranade. Rs. Two. To Subscribers of the *Indian Review* Re. 1-8. G. A. Natesan & Co., Madras.

the second of his '*Essays on Religious and Social Reform*,' Mr. Ranade says :

'The study of the morbid symptoms of a nation's decay is no doubt very irksome, but the pain must be endured and the scruples set aside. The Gordian knot tied during centuries of devolution cannot be cut asunder by any spasmodic violence. The successive stages of slow decay must be closely watched and diagnosed, if we would work out the solution of the difficulty. Fortunately, the doom of death is not, as in the case of an individual, irrevocable as fate, in the case of a nation so large as the Aryan population of India. The process of recovery may be slow, but if we stimulate the stifled seeds of health and growth, and lop off dead excrescences, decay may yet be arrested, and death successfully averted.'

We have referred to Mr. Ranade's anxiety to show that the baneful practices obtaining in the present-day India are recent introductions. But he would not have revival wholesale, undiscriminating, but reform. He asks friends of extreme orthodoxy who are for revival :

What shall we revive? Shall we revive the old habits of our people when the most sacred of our castes indulged in all the abominations, as we understand them, of animal food and intoxicating drink, which exhausted every section of our country's zoology and botany? The men and the gods of these old days ate and drank forbidden things to excess in a way no revivalist will now venture to recommend. Shall we revive the twelve forms of worship, or eight forms of marriage, which included capture and illegitimate intercourse? Shall we revive the old liberties taken by the Rishis and by the wives of Rishis with the marital tie?

What he advocates is liberation from the "restraints imposed upon an essentially superior religion, law and polity, institutions and customs, by our surrender to the pressure of mere brute force for selfish advancement."

The dependent status of women, customary limits of the age of marriage, the prohibition of marriage to widows in the higher castes, the exclusive confinement of marriage to one's own division of the sub-castes into which the country has been split up, the ignorance and seclusion of women, the appropriation by particular castes of particular professions, the prohibition of foreign travel, the inequalities made by the license enjoyed by men and the abstentions enforced on women, the jealous isolation in matters of social intercourse as regards food and even touch, indiscriminate charity to certain castes,—for these and many more deviations from the old

standards you cannot hold the old law-givers responsible. They are the work of human hands, concessions made to weakness, abuses substituted for the old healthier regulations (p. 286).

In connection with the economic teaching of Mr. Ranade we mentioned that he did not accept the doctrine of *laissez faire* of the economists. Neither in matters of social reform did he show himself a friend of the doctrine. He was prepared to welcome the action of the State 'as representing the highest and most disinterested wisdom of the times, working to give effect to beneficial 'tendencies, concentrating and popularising them.' 'State regulation is not attended with the mischiefs which people attribute to it, but it co-ordinates and vivifies the healthy action of the other agencies.'

There is no need to dwell on the individual reforms advocated by Mr. Ranade or the arguments advanced by him on their behalf. The cause of reform in all its phases is presented in the second volume of his published works with a winningness and fervour which are Ranade's own.

Ranade was of opinion that, having regard to the defects of the Hindu character, there was no ground for "hope of seeing any genuine reform movement springing up from within the heart of the nation, unless that heart is regenerated not by cold-calculations of utility, but by the cleaning fire of a religious revival." Real reform is a renovation of the spirit of man, and it goes down to the root of character.

It seems to many that it is the outward form which has to be changed, and if the change can be made, they think that all the difficulties in our way will vanish. If we change our outward manners and customs, and change our food and dress, sit in a particular way or walk in a particular fashion, our work, according to them, is accomplished. I cannot but think that much of the prejudice against reformers is due to this misunderstanding. It is not the outward form but the inward form, the

thought and the idea which determines the outward form that has to be changed, if real reformation is desired. Now what have been the inward forms or ideas which have been hastening our decline during the past three thousand years? These ideas may be briefly set forth as isolation, submission to outward force or power more than to the voice of the inward conscience, perception of factitious difference between men and men, due to heredity and birth, a passive acquiescence in evil or wrong-doing, a general indifference to secular well-being, almost bordering upon fatalism.

Hence the need for the cleansing of men's hearts, for the stirring of conscience, for the re-hearing of the voice of God within us.

Ever since the theistic movement was started in Western India, Ranade attached himself to it and actively promoted the cause. The Prarthana Samaj movement avoided the pitfalls besetting such movements generally, and its supporters remained within the pale of their respective communities. Religious reform was not a new thing in the Maharashtra. Ranade claimed for the Samaj movement a long ancestry :

We are representatives of an old race, as old as the Bhagavad Gita and the Bhagwat Purana; much older still; as old as Narada, Prahlada and Vasudeva and the nine sages who visited Janaka. From that time there is a continuity of sadhus and saints down to the present day (ii, p. 116 Raja Ram Mohun Roy).

Revelation is not for particular times or for particular peoples. Indian theism, according to Ranade, preaches that revelation is a perpetual stream which never ceases to flow. God is an abiding presence, a presence not to be put by. The individual soul has direct communion with the soul of the universe to which it is linked by the tie of faith, hope and love. (p. 24.)

The living faith of the people attracted Ranade, and he has given an account of what he calls Hindu Protestantism in his '*Rise of the Mahratta Power*' and elsewhere.

'*The Theist's Confession of Faith*' gives, in a convenient form, the most cherished beliefs of Ranade, and

shows how sedulous he is of being near the old landmarks and how anxious he is to make the faith vital and growing and equal to all the needs and aspirations of the soul. There are two kinds of tolerance—the tolerance of unbelief and the tolerance of conviction—the tolerance that recognises the utility and falsity of all, and another that recognises the soul of good in all. Ranade's tolerance was one of conviction—a part of his religion. He could say with Guru Nanak that he was neither Hindu nor Mahomedan (nor Christian, he might have added). It is purblind patriotism that would ignore the claims of the Mussalman and the Christian in the shaping of the future destinies of India. Ranade's was not of that sort. "The historical differences of national creeds will continue to exist like the different styles of architecture. The Christian church will not look in outward appearance like a Mahomedan mosque or an Aryan temple; but the differences of style and form will not interfere with the spiritual unity of purpose." Ranade was naturally attracted by the large-souled quest of Akbar, and if he were given to the study of poetry, 'Akbar's Dream' must have proved a great favourite. "There is light in all. And light, with more or less of shade, in all Man-modes of worship," would be subscribed to by the Indian theist. The political aspect of Akbar's reign was one equally important in Ranade's eyes.

No student of Akbar's reign will fail to notice that, for the first time, the conception was then realised of a United India in which Hindus and Mahomedans, such of them as had become permanently established in the country, were to take part in the building of an edifice rooted in the hearts of both by common interests and common ambitions.

Progress in the direction of union and national solidarity can be the result of mutual respect and mutual tolerance, of which Ranade was the great exemplar.

CHARACTERISTICS

What about the man himself and his life-work?

About his towering intellectual pre-eminence, his enormous industry, his steady pursuit of what appeared to him to be good ends, his selfless devotion to the causes he had at heart, his simplicity of habits and demeanour, his indomitable hopefulness and his cheery optimism, there are no differences of opinion. About his moral fervour, and his piety in the best sense of the term, there is no question.

What he has been reproached with is the lack of 'spirit,' or the lack of pugnaciousness. There was too little of the fighting Mahratta in him. In this connection Ranade's too ready yielding to pressure in the matter of the Prayaschit and the second-marriage has been referred to as betraying the weakness of his character. We are not going to make out that our hero was perfectly faultless, a pattern of all the virtues. Such monsters do not exist. Mr. Ranade would no doubt stand higher in our esteem, if he had not bowed his knee to Baal and if he had snapped his fingers in the face of orthodoxy and gone on unrepenting as regards the cup of tea, because there was nothing to repent of. The attitude of one that fights and runs away is admittedly not a heroic attitude. But running may be the only thing possible to the most heroic at times. We do not know enough of the circumstances to say that Ranade's course was the only possible one. Men have not enough faith in themselves, they do not blow the trumpets lustily, and they are astonished at the obduracy of the walls of Jericho. Ranade might have persuaded himself that going through the Prayaschit ceremony was the most effective way of bringing out the

hollowness of the affair. As one of Ranade's defenders put it:

Ranade had tried persuasion—straight reasoning. But that would not go down the throat of the orthodox. As a last resort he took the Prayaschit, which satisfied the orthodox. But who really won? Did the orthodox believe that Ranade had repented? It only showed the orthodox in the very silly position of respecting the form more than the spirit.

But the essence of orthodoxy, as we find it exhibiting itself, is this very respect of form over the spirit, and Ranade's humouring of orthodoxy must have only strengthened the opponents of reform.

The truer explanation seems to be, he wanted to take the people with him: he found that men in his society were not ripe enough for the move; he did not want to go into the cave by himself and wait there for men to come over to him by twos and threes—

He would not *alone*
Be saved; *alone*
Conquer and come to his goal
Leaving the rest in the wild.

After all, as the French proverb has it, he that excuses accuses, and we should have preferred that Ranade had given us no occasion to defend him.

With regard to the other question, it seems to be extremely bad taste to say of one now no more, and of such an one as Ranade, that in matters of vital concern like his marriage he did not know how to make a choice himself, and that the critics would have chosen better for him. As he found in the partner of his choice a true helpmate, and as he came as near finding the perfect wife nobly planned, to warn, to comfort and command, as it has been possible for any Hindu, criticism may have grace enough to slink by abashed and put the seal of silence upon its lips.

Allied to this too yielding quality of Ranade's, this 'gentleness' carried to the extreme, was the lack of 'pushfulness.' A writer in *East and West* pointed out that K. T. Telang was earlier elevated to the Bench than M. G. Ranade, because the latter was less known to influential Europeans than Mr. Telang. We do not think that lack of energy to advance one's own interest is much of a vice. We find so much of energy exhibited in this direction that we should prefer we had more men of the stamp of Mr. Ranade, content with doing their work and not too anxious about its recognition by Government.

Mr. Ranade lacked the social graces which secure for the possessors solid advantages not attained by mere work, mere worth. With a heavy ungainly person, with a scholarly stoop, with impaired eyesight, with a snuffle and much application of the handkerchief to the nose, Ranade had to overcome prejudices before he fascinated men by the beauty of the soul. An eye-witness has described how he listened to the seemingly impossible lecturer, and how, in spite of the superficial want of polish, he was gradually won over to listen to him with less of indifference, with interest, and eventually with admiration.

Ranade had not the fire or fervour of high strung emotional temperaments, and his addresses appealed more to the men of intellect, less to the man in the street, who hurrabs with rapture those that debauch him with outbursts of feeling. His habitual enthusiasms were for the advancement of India, for removal of social wrongs and injustices, and these were beyond the emotional range of the many who eddy about in a purposeless way. With all this he had an indomitable energy, and did work that must put to shame the busy idleness of so many

among us. Ranade had, in spite of his towering pre-eminence in certain endowments, his human side. He had his touch of imperfection which makes him kin with us.

Unchallenged homage is given to what worldlings consider mere 'dreamers of dreams,' men ready to lose all in order to win all, world-losers and world-forsakers, yet 'movers and shakers of the world for ever.' Such are the men who are in possession of life's supreme mystery. They meet in some sort according to Dr. W. James, -the secret demands of the universe. Below them because of imperfections, yet of them, are men who, albeit with many sins, are ready to fling down their life, the dearest things they owe, as things of nought. The willingness to risk death, the suffering of death heroically, consecrates these men. There are other and less supreme renunciations -voluntary embracing of poverty, renunciation of family ties, to weak affectionate souls more cruel than death, with a view to carry on unfettered work that does not appeal to ordinary men—work that does not get its value in the world's coinage, but smells sweet and blossoms after the worker is dust and his worldly companions ashes. These have an irresistible attraction for some men. Ranade, it may be, belonged to none of the above mentioned classes; but though he was, by the accidents of life, a worldling—a Lokayata—still, in essence, he was of the class of men who scorn their own selfish delight and live laborious days for the betterment of their fellow-men. His closest friends and acquaintances used to call him a Rishi. Amid the paraphernalia of worldly 'gauds,' there was within him a hidden ground of thought and of austerity. And that is not extraordinary in a land where Puran Bhagvat is not a freak of nature. Lucky, indeed, it would

be for India if this passion for renunciation, dormant in the best of our countrymen, should be roused and directed to ends most beneficial to our country. Ranade would have lived in vain if to such men his life and his bequest should not prove an inspiration.

We will conclude the sketch by quoting the appreciation of Mr. G. K. Gokhale, expressed on the occasion of the Memorial Meeting held in Bombay on Mr. Ranade's death :

We all know how faithfully Mr. Ranade lived upto the ideal he set before himself. It was a noble mission in life fulfilled, but the cost he had to pay for it was by no means a light one. I do not speak of the sacrifice of physical comfort which it involved—for no man bore his burden more cheerfully with less desire to complain or with less desire even to rest than Mr. Ranade—but I speak of the mental suffering which he had so often to endure. About eight years ago, in speaking of the late Mr. Telang in this very place, Mr. Ranade described in a passage, which has since become classical, the conflict which two ideals of conduct and two forms of duty constantly presented to the minds of men such as he and Mr. Telang, in the present transitional state of our society. Mr. Ranade had to face this conflict in several spheres of his activity and endure the pain which it often occasioned. Not only had he to lead what he himself called a twofold existence in social and religious spheres, but in political matters also an apparent conflict sometimes arose between what was due to the rulers by way of a generous recognition of their work and difficulties, and what was necessary in the largest interests of the country; and the effort to reconcile the two duties was not always free from anxiety or pain. But Mr. Ranade accepted all such suffering in the right spirit, looking upon it as a preparation for better things to come. "We must bear our cross," he once said, "not because it is sweet to suffer, but because the pain and the suffering are as nothing compared with the greatness of the issues involved."



SIR SUBRAMANIA IYER

SIR SUBRAMANIA IYER

INTRODUCTION

LORD Ampthill, a former Governor of Madras, used these words about Sir Subramania Iyer :

I regarded him as the soul of honour, as a man who had absolutely no personal ends to serve, and who devoted his great abilities solely to the public good. It seemed to me that in his life and conduct he effected an ideal compromise between adherence to Indian ways and the requirements of European methods. Neither too conservative nor too progressive, he remains the perfect model of an Indian gentleman and is broad-minded enough to adapt himself gracefully to the political and social requirements of the British connection with India. His life is an example to all, for the virtues of piety, modesty, industry, and patriotism are equally essential to all classes and conditions of men. I shall never forget his demeanour when His Majesty the King, at that time Prince of Wales, visited Madras, for it was a picture of that respectful dignity and dignified respect which are among the true characteristics and most forceful qualities of Indians.

HIS LIFE

He was born in the district of Madura on 1st October 1842. In his ninth year he learnt the English alphabet and then went to a Mission school and then to an English school started by one Krishnaswami Chettiar. Then he studied in the Zilla school in 1856. He eventually won a scholarship there and passed the English examination held by the Government. He then accepted a clerkship in the office of the Deputy Collector at Madura. Mr. Rama Row, Deputy Collector, took him to Ramnad, but he came back to the Madura Collector's office. While there he studied law and appeared for the Pleadership Examination and topped the pass list. But he was not able to get a pleader's *Sanad*, as Mr. Cotton, the District Judge of

Madura, was offended at his not salaaming him on entering the Court. Eventually the District Magistrate appointed him as Public Prosecutor. He then came back to the Collector's office. Later on he passed the Matriculation Examination in 1865 and the F. A. Examination in 1866. He then passed the B. L. Examination in 1868. He was apprenticed to Mr. J. C. Mills, Official Reporter of the High Court. Then he was appointed as acting Tahsildar of Madura and continued so for six months. Then he went to Madras and was enrolled as a High Court Vakil. He decided to practise at Madura and found that fortune had begun to smile upon him.

In 1870 he was appointed as a municipal commissioner of Madura and a member of the Local Board there. He had a park laid out at Madura at a cost of Rs. 18,000, his own family contributing Rs. 4,000. He was responsible also for the garden raised round the temple. He was one of the very few men in India who realised and showed in practical life that the path to conspicuous national service is through disinterested local service or the righting of wrongs near at home and the making of the lives of our neighbours better and purer and happier than before. Municipalities should not merely clean and light the towns which they administer, but should beautify the towns and conduct municipal theatres and music-halls and have galleries of art, so that a healthy local taste and a higher standard of life might come into existence in the towns.

In 1873 he conducted a suit against the temple committee in respect of a sum of Rs. 40,000 not properly accounted for, and won the suit. The people of Madura then elected him as a member of the Devastanam Committee. Throughout his life he strove hard to introduce

rectitude into the management of temples and his Presidentship of the Dharma Rakshana Sabha ever since its organisation was a fitting recognition of his lifelong labours in the direction.

In 1875 when His late Majesty King-Emperor Edward VII, then Prince of Wales, visited Madura, Sir Subramania Iyer had the honour of presenting to His Royal Highness an address of welcome on behalf of the people of Madura. Out of the funds raised for according a fitting reception to the Prince of Wales a surplus of Rs. 14,000 remained and Sir Subramania Iyer had the sum used to build a bridge across the Vaigai.

In 1884 Sir M. E. Grant Duff, then Governor of Madras visited Madura, and Sir Subramania Iyer presented to His Excellency an address as the Vice-President of the Madura Municipality. The Governor came to know him and his worth and nominated him as a non-official member of the Madras Legislative Council. On 1st January, 1877, he was awarded a Certificate of Merit on the occasion of Lord Lytton's Durbar at Delhi.

His wife's death in 1884 turned his attention to the deeper problems of life. He became a member of the Theosophical Society and was a staunch supporter of it throughout his life. This sketch is not a suitable place to discuss the origin or the development or the future of that movement which, whatever its merits or shortcomings in the light of Hindu thought and Hindu social ideals, has certainly played a large part in the life of a section of modern educated India.

In 1868 he was appointed as acting Government Pleader being the first Indian to have that distinction in the Madras Presidency. He conducted various important and sensational prosecutions, one of these being the famous

Nageswara Iyer Forgery Case. He conducted also a sensational case against the Mahant of Tirupathi.

AS NON-OFFICIAL LEADER

Thus his work as a non-official leader of the public was between 1877 and 1895 and was a record of honest and strenuous service for social uplift and regeneration. He never became the slave of his professional work or the spokesman of Government but stood up for justice, for manliness, and for honourable dealing. He regarded his professional success and eminence and his influence with the Government as means of effecting public improvement. He gave evidence before the Famine Commission in 1877 at Madura. He pleaded then for legislation to protect tenants from harsh and arbitrary eviction by landlords. He worked also for the lessening of the official element and the increase of the popular element in local boards and Municipalities. Lord Ripon's resolution of 18th May, 1882, led to the realisation of his dreams in this direction. It stated the policy of the enlightened Government of Lord Ripon in words worth recalling and remembering even now:

It is not uncommonly asserted that the people of this country are themselves entirely indifferent to the principle of Self-Government; that they take but little interest in public matters; and that they prefer to have such affairs managed for them by Government officers. The Governor-General-in-Council does not attach much value to this theory. It represents, no doubt, the point of view which commends itself to many active and well-intentioned District Officers; and the people of India are, there can be equally no doubt, remarkably tolerant of existing facts. But as education advances, there is rapidly growing up all over the country an intelligent class of public spirited men, whom it is not only bad policy, but sheer waste of power to fail to utilise There is no antecedent improbability in the theory that if non-official auxiliary agency were more thoroughly organised and more fully trusted, there would be a speedy and marked improvement not only in its amount, but in its efficiency.

To give effect to Lord Ripon's noble scheme the Madras Government appointed a committee of officials and

non-officials to make recommendations. Sir S. Subramania Iyer could not agree with the report of the majority and appended a valuable minute of dissent which shows his outspoken frankness and independence and his keen insight into the real needs of Indian social and political life. He says therein :

An unwarranted disbelief in the fitness of the people of this Presidency to receive a real extension of Local Self-Government, and an exaggerated notion of the dangers likely to arise from the Collector-Magistrate ceasing to be the President of Municipal Commissions pervade and characterise most of the recommendations of the Committee The recommendations of the Committee take away from the local bodies the only real power, viz., the power of the purse Now the object of the Resolution of the Government of India is to foster local responsibility and to leave local bodies less fettered in their movements except it be for the purpose of preventing them from running into dangerous or illegal actions, and thereby to develop reliance in themselves and capacity for Self-Government.

AS CONGRESSMAN

When the Indian National Congress, which is now such a great political and unifying force in India, was born, Sir Subramania Iyer took a prominent part in guiding and developing it aright. At the very first Congress, held in Bombay, he recorded the resolution advocating the reform and expansion of the local and imperial legislative councils. In the speech delivered by him on that occasion he said :

I should not fail to admit, however, that the actual working of these councils is enveloped in somewhat of a mystery and to one outside it, it is a puzzle how it is that the non-official members are so little able to do good of any kind.

At the second Congress, which was held at Calcutta, he seconded the resolution dealing with Indian poverty. Till he became a High Court Judge and also subsequent to his retirement, he strove to keep before his mind the lofty ideals for which the Indian National Congress stands and to spread them broadcast and work for their realisa-

tion. In 1914 he was the Chairman of the Reception Committee when the Congress met at Madras.

During the two terms when he was nominated as a member of the Legislative Council at Madras the powers of the non-official members were very limited. The right of moving resolutions or even making interpellations did not exist. The non-official members tried to do what good they could within the limits rigidly and rigorously set for them by the paternal autoocracy of the Government. Sir Subramania Iyer introduced into the Council in 1886, his bill for compensation for tenants' improvements in Malabar. The result of this measure was that the tenants were induced to reclaim and improve large tracts of uncultivated land and thus add to the agricultural wealth of the country.

AS FELLOW OF THE UNIVERSITY

In 1885 he was appointed a Fellow of the Madras University and his valuable connection with the University continued till 1907. The proceedings of the Senate of the Madras University during those years show what a vital interest he took in the guidance of the education of the youths of the land. He pleaded for lightening the curriculum of studies, for making education less examination-ridden, and for other important educational reforms. He was also the first Indian to be appointed as the Vice-Chancellor of the University. He was also the first Indian to receive the honorary degree of the Doctor of Laws which was conferred on him in 1908. His Convocation address of 1896 is full of valuable counsel to the youth of the land and no less valuable advice as to the development of higher education in the country.

AS A JUDGE

In January 1895 he was appointed as a Judge of the High Court of Judicature at Madras in succession to Sir

T. Muthuswami Iyer whose greatness and legal acumen were admired by the Government as well as by all sections of the people irrespective of caste, colour, or creed. To succeed Sir T. Muthuswami Iyer worthily and to maintain the high traditions of the supreme judicial office were no easy task. How greatly Sir Subramania Iyer distinguished himself as a Judge and justified his choice in every way, will be evident from a perusal of these pages. He acted as the Chief Justice of Madras in 1899, 1903, and 1906. He was given a Knighthood on the New Year day of 1900. He retired on 13th November, 1907, on account of failing health. The Madras Government issued the following *Gazette Extraordinary* on the occasion of his retirement :

The Hon. Justice Sir S. Subramania Iyer, K. C. I. E., Dewan Bahadur, is permitted to resign the office of a Judge of the High Court of Judicature at Madras with effect from the 13th of November 1907. The Governor-in-Council desires to place on record his appreciation of the eminent services rendered by Sir S. Subramania Iyer, K. C. I. E., during his long terms of office as a Judge of the High Court. The high judicial qualities, the independence of character, and the profound learning which he has at all times displayed throughout his long and honourable career have earned for him a name which will long be held in reverence and esteem by the Government and the public.

RETIREMENT AND AFTER

Life after retirement had not been to him a life of purposeless leisure but a life of strenuous work for India's regeneration. He had been President of the Dharma Rakshana Sabha ever since he founded it and had been using it as a means of reforming the management of Hindu religious institutions. He convened a *Parishad* at Conjeevaram to focus orthodox opinion upon our social condition. Though the idea of a *Parishad* is an old one in India, the institution had for long disappeared from our social life. Latterly he took very strong views in respect of social

change and transformation, especially in regard to the marriage of girls after puberty.

Though Sir Subramania Iyer was one of the founders of the Congress and had for long taken a keen and active part in its deliberations, it was during the Home Rule agitation of 1917 that he came to the forefront as a public leader; and when Mrs. Besant was interned by the Government of Lord Pentland, he led the agitation for her release with great courage and ability. It was then too that he wrote a remarkable letter to President Wilson—a letter which was much criticised at the time in Parliament.

In that letter Sir Subramania Iyer had asked the President of the U. S. A. to interfere to get Home Rule for India. The proceeding was open to question and constitutional authorities were much perturbed and when Mr. Montagu visited Madras in December 1917, he took upon himself to speak to the retired judge "harshly" and "violently" on the subject (as Mr. Montagu has recorded in his DIARY.) And the substance of that letter was more than the Secretary of State could stand, for Sir Subramania Iyer had said in his complaint against British officials that they "voted themselves exorbitant salaries and large allowances; they refuse us education; they sap us of our wealth; they impose crushing taxes without our consent; they cast thousands of our people into prisons for uttering patriotic sentiments—prisons so filthy that often the inmates die from loathsome diseases."

Indeed he remained as active and enthusiastic as a young man to the very end of his long life. As a protest against the arrest of Mrs. Besant by Lord Pentland's Government, he gave up his knighthood. Sir Subramania Iyer had played his part as lawyer, judge and political leader with distinction, and towards the close of his long

and arduous life he retired to a peaceful retreat in Guindy, a suburb of Madras, and spent his last days in religious meditation. One of the giants of his generation, Sir Subramania Iyer passed away in December 1924 in his eighty-third year, full of years and honour, revered by all as the Grand Old Man of Southern India.

SIR SUBRAMANIA IYER, THE MAN

The loveableness of the man and his noble and attractive personal qualities won for him the brief and endearing appellation by which he was universally known—Mani Iyer. One of his most loveable qualities was his generous and philanthropic nature. He used almost daily “to do good by stealth and blush to find it faine”. It was well-known that day by day his house was resorted to by the needy and the oppressed and that he used to solace them by gentle words, kind offices of love, and liberal donations. He helped innumerable poor boys to complete their education and win for themselves an honourable place in life. His nobility of nature was shown also in his extending a helping hand to struggling merit and enabling it to win for itself the position which it was destined to adorn. It was familiar knowledge in South India how much the late Mr. V. Krishnaswami Iyer and the late Mr. P. R. Sundara Iyer owed to him for their success and distinction in life. The rare sweetness and nobility and impulsiveness of his nature were writ large on his high forehead and expressive eyes and mobile features.

AS LAWYER

Sir Subramania Iyer was a great student of law and took a keen interest in English and American Law and Roman Jurisprudence. Though he was not so subtle and acute a lawyer as Sir Bhashyam Iyengar, he had rare legal acumen and splendid powers of advocacy and forensic

eloquence. As a senior he was unique in his treatment of junior lawyers. In the annals of the legal profession he occupied a unique place as one who was eager to help merit, to cheer and brace up the timid, and to preserve the highest traditions of the noble and learned profession of law. It was a rare act of discrimination and nobility on his part to have pulled up the late Mr. V. Krishnaswami Iyer and the late Mr. P. R. Sundara Iyer from the slough of despond into which many persons beginning the profession of law are certain to fall. His record as a lawyer was thus as clear and noble as it was bright and meritorious. Among the cases he conducted must be mentioned the sensational case against the then Mahant of Tirupati. His period as Government pleader having expired, he was appointed as special prosecutor. The Mahant was charged with substituting copper coins under the flagstaff misappropriating the old gold coins laid thereunder. Mr. Subramanya Iyer (as he then was) made a powerful speech in the application before the Chief Justice Sir Arthur Collins and Justice Muthuswami Iyer for an order to remove the flagstaff and get direct evidence of the misappropriation by the Mahant. In concluding that speech he said: "The maxim of law is that justice should be done even though the heavens fall. Surely your Lordships cannot be deterred from doing justice here, because the mere trifle of a thing, a flagstaff is to fall." The High Court ordered the application; and then it was found that the apprehensions were right; that the Mahant had committed the sacrilegious misappropriations.

CONTRIBUTIONS TO HINDU LAW

His eminence and learning as a Judge were acknowledged on all hands. In 1905 when the Madras Estates

Land Bill was being considered in the Madras Legislative Council, Lord Ampthill said : " I have heard it said that the ryot of Southern India will never know how much he owes to Justice Sir Subramania Iyer for having declared that ' the Common Law ' of Madras gives every ryot an occupancy right irrespective of the period of his holding." The Hon'ble Mr. G. S. Forbes, who introduced the Bill, referred to him and Sir T. Muthuswami Iyer as great and distinguished Judges.

This is certainly not the place to attempt an analysis of his judgments but we wish to indicate here what were the main features of the evolution of law at his hands. He paid great attention always to the immutable principles of morality and social well-being on which the rules of law are finally based. In I. L. R. 19 Madras 127, Sir Subramania Iyer held that the adoption of a minor girl by a professional prostitute for immoral purposes is invalid. He said :

For whilst in cases of fraud and mistake the wrong is usually personal to the injured party and can be waived, it is different in cases of illegality. In these the wrong is far-reaching and is done to society. Consequently, in such cases, the interests of individuals must be subservient to public welfare. *McNamara vs. Gargett*, 13, American State Reports, 361.

So far as his contribution to the development of Hindu Law is concerned, we may point out here that he took generally a liberal view in regard to the holding of property by women. In fact he was instrumental, in so far as it lay in the sphere of the High Court, in advancing the cause of Hindu social advancement. In I.L.R. 21 Madras 100, he laid down that on the questions as to what is *stridhan* and as to the rule of succession thereto Vijnaneswara is to be preferred to the numerous later writers " who are never agreed and who in their

attempt to reconcile the various Smritis complicate the matter by prescribing different lines of devolution, those too not complete according to the class of *stridhanam* to which the particular property belongs," and he proceeded to point out how the *Mitakshara* laid down "rules which are easy of application, complete in themselves and on the whole equitable". Speaking of *Vijnaneswara*'s statement that *stridhanam* is not to be understood in a technical sense, he pointed out that this was not mere philological observation. "By laying down that observation *Vijnaneswara* and other great commentators who followed him, succeeded in effecting a beneficial change in the archaic Smriti law and placed women almost on a footing of equality with men as regards the capacity to hold property." In I.L.R. 28 Madras 1, he held that the savings or the property purchased out of savings by a widow out of the money awarded to her by decree as maintenance was her *stridhanam* and could be disposed of by her and that there is no presumption that the savings by a widow from the income got from her husband's estate are increments to that estate. In I. L. R. 22 Madras 305, he held that the moral obligation to support a daughter-in-Law acquires on the father-in-law's death the force of a legal obligation against his self-acquired assets in the hands of his heir. In regard to the law of maintenance he decided also that a woman who has been kept as a concubine for a number of years continuously and then discarded cannot claim maintenance from him under the Hindu Law (I.L.R. 23 Madras 282). In regard to the law of gift he held in I. L. R. 22 Madras 113, that a mother succeeding to her son's estate could give a reasonable portion of the property to her son-in-law on the occasion of her daughter's marriage and that the

gift was binding on the reversioner. In regard to the law of marriage he held in I. L. R. 24 Madras 255, that though a husband is the legal guardian of his wife from the moment of his marriage with her, he is, by the general custom prevailing among the Hindu community in this presidency, not entitled to the actual custody of his wife until she attains maturity, unless such custody should be necessary in the interests of the girl. In I. L. R. 26 Madras 497, he held that the ceremonies of *Grahapravasam* and *Ritusanthi* are essentially connected in the disposal in marriage of a Brahmin girl and form a part of the marriage ceremonies. In regard to the law of adoption he held in I. L. R. 26 Madras 681, that the authority to adopt given by a husband to his widow is not exhausted by one adoption. The Privy Council confirmed this view and referred to the view as one taken "by the learned Judges of the High Court one of whom is a Hindu lawyer of great distinction". (I. L. R. 29 Madras 382.) In regard to the law of inheritance he laid down in I. L. R. 27 Madras 591, that though the question whether a Hindu who had been party to a murder cannot succeed to the estate of the person is not answered by Hindu law, the principle that no one shall be allowed to benefit by his own wrongful act is of universal application, and that the Court must administer the law of justice, equity, and good conscience in cases not provided for specially. In 16 Madras, (Law Journal 491,) he tried to introduce a rule of justice and equity into Hindu Law though the other Judges did not agree to this. He held that the birth of a son to a Hindu after making a will disposing of all his self-acquired properties has the effect of revoking the will if its effect is to leave the son unprovided thereby, provided the omission to provide the son is not intentional. Another important

ruling in Hindu law is his decision in *Ramaswami Aiyar v. Vengiduswami Aiyar* (I. L. R. 22 Madras 113); he laid down that it was open to a widow to make a gift of a reasonable portion of the land belonging to her husband at the time of the marriage of his daughter. The principle laid down was extended by later decisions of the Madras High Court so that now it is law that a father, brother or widow can make a gift of a reasonable portion of the family property as a provision for a daughter or sister, and we owe this "much needed amelioration of the law" to Sir S. Subramania Iyer.

Thus the cause of Hindu social advancement was amply realised by his decisions where the rights of Hindu women were affected. As has been pointed out, "he was never enamoured of the letter of the law and his aim as a judge was always to advance jurisprudence and place equity before the technicality of law."

In regard to the law relating to landlord and tenant he effected various beneficent changes securing to raiyats a higher status and the enjoyment of their immemorial privileges. In I. L. R. 21 Madras 116, F. B., he says at page 121: "The authorities cited there show that raiyats are neither tenants at will nor tenants from year to year, but possess in the lands under their occupation a far more lasting interest, and in fact they are peasant proprietors being entitled to what is known as the kudivaram right as opposed to the molvaram right or the right of the State." In the well-known case of *Cheekati Zemindar vs. Ranasour Dhora* (I. L. R. 23 Madras 318) he enforced this view clearly and strongly. He said :

But if we turn to Zemindari lands what is the state of things we meet with? Practically the whole of the agricultural land there is not cultivated by persons who merely hire it for a limited time. The raiyats most generally hold by no derivative tenure.

His keen interest in the welfare of charitable and religious institutions is evinced as much in his judgments as in his work as a non-official before and after the period of his Judgeship in the High Court. In I. L. R. 23 Madras 298, he says:

No doubt, if under the law, a temple trustee may accept or reject voluntary contributions according to his mere whim and fancy, then no suit would lie in respect of the non-celebration of festivals or ceremonies which depended wholly or even substantially on his accepting the contributions. Having regard to the fact that in the case of public religious institutions like the present funds voluntarily given have often largely contributed and do still contribute not only to make the institutions richer but also to promote the interest of public worship, it must be regarded as part of the trustee's proper functions to utilize this sort of income for the purposes of the institution whenever it is available. It is the trustee's duty to accept the money and apply it for the specified purpose, unless there are proper grounds for rejecting the offer. . . . And of course the Courts are bound to restrain a trustee from injuring the interests of the institution under his charge by corruptly, arbitrarily, or wantonly departing from the ordinary course of procedure in regard to essential or important matters connected with the institution. That such departure on the part of a trustee amounts to a breach of legal duty incumbent on him is the ground on which the Court exercises jurisdiction over him.

In I. L. R. 22 Madras 361, he held that it is not part of the duty of the Devastanam Committee to interfere with trustees in matters of rituals and that the business of the Committee is primarily to see that the endowments are appropriated to their legitimate purposes and are not wasted. In I. L. R. 22 Madras 481, he held that the failure on the part of a trustee to submit accounts to the Committee is a breach of one of the most important duties cast upon him by law and is sufficient to justify his dismissal. The view taken by him in I. L. R. 26 Madras 435 as to the position and powers of the head of a mutt has, however, been modified by later judicial pronouncements of the Madras High Court.

We may refer here to a few other aspects of his exposition of the law of the land. In I. L. R. 23 Madras

179, he laid down in clear terms that it is an undoubted rule of law that a person who has been ousted by another who has no better right is, with reference to the person so ousting, entitled to recover by virtue of the possession he had held before the ouster even though that possession was without any title. In I. L. R. 23 Madras 239 he laid down the rule that "it is scarcely necessary to say that the plaintiffs' asking for larger relief than they are entitled to does not warrant the dismissal of the suit altogether. The wishes of the parties must not be confounded with their rights, and because they fail to prove all they wish there seems no reason for denying them the rights which they establish." He desired in I. L. R. 27 Madras 386, the Government's right to impose peatal assessment but a later legislative enactment armed the Government with powers which were negatived by him. In I. L. R. 30 Madras 340 he took the broad and liberal view that a gift for *Dharman* is not void for indefiniteness, as the word 'Dharman' when used in the connection with gifts of property has a perfectly well-settled meaning and connotes *ishta* and *poortha* donations.

VIEWS ON EDUCATION

In his dissenting minute to the report of the committee appointed by the Government to give effect to Lord Ripon's resolution to extend the scope of Self-Government in India, Sir Subramania Iyer said :

I think that in the present state of the country every available rupee should be spent on primary education and many years should elapse before it can be said that such education has been properly attended to. I think also that it would be throwing unnecessary labour and responsibility on Municipal Committees and Local Boards to compel them to look after middle education.

With such strong views on primary education Sir S. Subramania Iyer also did yeoman service to the Madras

University. He was a strong advocate of scientific learning and research. It was his strong recommendation that resulted in the revival of Sanskrit learning on modern lines and progress in the vernaculars. He was responsible largely for the recognition of merit by the Government by their conferring the title of Mahamahopadhyaya on the foremost scholars in Sanskrit and in Tamil of his days. It was therefore only in the fitness of things that the Madras University conferred on him the honorary degree of Doctor of Laws which much coveted honour had been only once before conferred and that on an educationist Dr. William Miller.

ON RELIGIOUS ENDOWMENTS

In the same minute he expressed himself thus about the duty of the Government in regard to religious endowments:

I believe in regard to Devastanams the fault lies with the Government. The extensive endowments and property belonging to these trusts were suddenly handed over without the necessary precautions to irresponsible persons, and when the inevitable result of that course followed, it was attempted to be remedied by a most faulty piece of legislation bringing into existence a machinery altogether unsuited to secure efficient working and steady progress. Under the Act the Committee is not given a chairman to regulate its deliberations. No rules for the meetings of the Committees or transactions of its business are laid down. There is no executive officer to carry out its decision. Once appointed or elected a person became a member for life heedless of public opinion ever after, and secure in his place except when reached through the cumbrous and expensive process of Law Courts. In these circumstances it is a wonder that the Committees have gone on as well as they have done and that the institutions should not have decayed altogether. As a matter of fact there have been very few instances of misconduct on the part of the committee members. Misconduct of hereditary trustees not subject to any real control by these Committees has often been attributed to the inefficiency of the Committees themselves. A great deal more can be said on the matter in general but the above I trust will suffice.

It was his insistent demand for a better control over religious endowments that paved the way for the local legislation by which Hindu religious endowments have now

been brought under the control and supervision of a Board of Commissioners appointed by the local Government.

THE RYOTWARI SYSTEM

In his speech at the second Congress, he said about the ryotwari system :

I believe the history of the ryotwari administration has led to the conclusion that it is better to have a system of Zemindari administration with all its faults, than the ryotwari system. It may be that the Zemindars, as is believed by some, do, in some cases, screw out every farthing that they can from their tenants; but the Zemindars, as we have seen, can be reached by a Tenancy Act, whereas in the Presidency of Madras it is impossible to control by any Tenancy Act the exactions of the revenue authorities. I should like to see a government servant on our side of India, who is prepared to admit that the right of enhancement ought to be defined and limited by legislative enactment as against the Government.

REPRESENTATIVE INSTITUTIONS

In regard to the question of representative institutions he held emphatic and liberal views. In the dissenting minute already referred to, he says : "I am also strongly opposed to the nomination by Government of the Divisional officers as Vice-presidents of Taluk Boards. If this were done the Divisional Officer will have all his own way and the Boards exist only in name." In his speech at the first Congress he spoke thus about the then constitution of the Legislative Councils :

It was not till I myself became a member of the Madras Legislative Council that I saw how unjustly our friends in the Council were censured in the majority of instances and what little influence they possessed in the Council either for good or for evil. With the best intentions in the world, I may assure you, gentlemen, they find themselves in the wrong place, and so long as the present constitution of these councils remains unchanged, it is idle to expect that these non-official members will prove of any great use to the country. . . . If one carefully noted the successive laws that are enacted by these councils, one would plainly see that the functions of these councils are limited to registering the decrees of the Executive Government and stamp them with legislative sanction.

Elsewhere he said :

If their small spheres of work these Indian Members of Council can hope to effect no beneficial change in administration unless they are prepared to coalesce and act in unison with their colleagues.

In regard to representative institutions generally he said in his speech at the second Congress :

If there is one system more than another under which we are more likely to improve the administration of the country and to devise and ensure the adoption of measures to get rid of poverty, it is under a system of representation.

LINES OF NATIONAL WORK

We may refer to a few other valuable ideals given by him in respect of proper lines of national work. In 1915 he said when presiding over the great meeting at Madras convened to welcome Mr. and Mrs. Gandhi :

We want the soul-force which Mr. Gandhi is trying to work up. Soul force consists in a man being prepared to undergo any physical or mental suffering, taking the precaution that he will not lay a single finger to inflict physical force upon the other side. It was that soul-force that was manifested by the South African Indians and it was the same force that should be developed in this country.

THE INTERNMENT OF MRS. BESANT

No account of Sir S. Subramania Iyer's later activities will be complete which does not recount the leading part he took in the great agitation which soon spread throughout the country protesting against the then famous speech of H. E. Lord Pentland, the Governor of Madras in May 1917, in the course of which His Excellency had attacked the Home Rule movement and its methods of work. It looked for a time as if His Excellency's threat of repression would dishearten public workers; but Sir Subramania Iyer displayed remarkable courage in writing the following bold communication to the press :

Before I was raised to the Bench I was a Congressman and to me Home Rule is no new thing. I believe and have long believed that its early establishment is vital for the welfare of the country

and the stability of the Empire and that it is therefore necessary to carry on a constitutional and educative agitation for it as ordered by Congress at its last session. Believing this I gladly accepted the Honorary Presidentship of the Home Rule League for India—honorary only because my health forbids active and strenuous work. I cannot retrace my steps. I will not resign my office even if the League be declared unlawful. I am ready to face any penalties which may follow on my decision. In the words of the Congress, in the reconstruction of the Empire after the War, to defend Home Rule is to me a civic duty and this duty I will discharge. I call on you my contrymen to do the same.

The effect of this was marvellous. It revived many a drooping spirit and it stirred up the public to a proper sense of its responsibility. And though Lord Pentland's Government followed up the famous speech with the internment of Mrs. Besant and two of her associates, Sir Subramania Iyer, undaunted, pursued his campaign against the Government and the agitation for her release with characteristic boldness and vigour. When Mrs. Besant and her associates were released it was said on all hands that the credit of it was due, in no small measure, to the courageous and indefatigable activities of "old" Sir S. Subramania Iyer.

AGITATION FOR HOME RULE

But Sir Subramania Iyer would not rest content with the release of Mrs. Besant. As President of the Home Rule League he was urging ceaseless activity and propaganda work for obtaining the reforms set forth in the scheme of the Congress and Moslem League. He wrote numerous communications to the press and delivered many public speeches, denouncing the evil effects of bureaucratic administration and insisting times without number that the only reform that would save the situation was the breaking up of the monopoly of the Civil Service and giving the people popular control over the Executive. In his memorandum submitted to the Secretary of State in

December 1917, he thus hit the weakest spot in the present system of administration :—

In India, however, the defects of bureaucratic rule are accentuated by the fact that the administration, or that portion of it which holds the reins of power, consists of an alien race with ideals and a civilisation sundered as widely as the poles from those of its subjects. Nor is that the worst. The administration is not merely alien racially, for if that were all we might expect that race with the traditions of freedom and bred up in the democratic atmosphere of Britain would be capable of sympathising with and guiding the aspirations of the subject race. Unfortunately the administration has become the special preserve of a caste—and we in India have had bitter experience of the soul-deadening effects of caste-rule. That caste has traditions and shibboleths of its own. It is a close corporation, recruiting its ranks, it is true, regularly from the outside world, but taking the utmost precautions that neophyte shall assimilate its traditions and atmosphere, and punishing the aberrations of an occasional strong-minded man, tempted to stray from the narrow path laid down by it, by the crushing weight of its collective disapproval or, even in extreme cases, by means of social ostracism. It has thus developed a type with well-marked characteristics, and nothing is more remarkable than the way in which new recruits assimilate to that type. So powerful is its influences and so overpowering is the anaesthetic character of its atmosphere that instances have not been wanting where men who have spent a lifetime in the democratic air of England have succumbed to its narcotic influence and surrendered with cheerful passivity the principles of a lifetime.

He rightly urged that “the only solution history has ever found for such diseases in the body politic is the extension of popular control over the executive”.

That is why Home Rule appears to me not only inevitable, not only a gracious boon conferred upon the people of this country by Britain, but the only remedy adequate to the needs of the situation, the only measure that can insure the continuance of the British Empire.

AS A FRIEND OF YOUNG INDIA

Sir Subramania Iyer deserves particular regard for his lifelong and passionate desire to attract the youth of the land to the cause of patriotism and unity. In his Convocation speech in 1896, he emphasised the need for culture as distinguished from mere education. According to him

true education should not merely impart knowledge but generate and develop mental power, train the youth in the art of citizenship and the art of life, and bring to beautiful blossom and bounteous fruit the powers with which God has endowed man. Twenty years later when presiding over the Madras Students' first Convention, he emphasised the same ideas again. He said :

You are eager to render service to your country, to your fellow-men; make yourselves worthy for that high calling. You have within you the spirit of self-sacrifice but ask yourselves, whether you have anything worth offering? You aspire to worship the Motherland; let me exhort you not to go to the National Temple empty-handed, empty-headed, empty-hearted. Let your heart be a veritable mine of sparkling gems, of pure emotions, diamonds of power, rubies of love, emeralds of deep sympathy; let your head be a silent lake wherein are reflected the grandeur of the mountain peak of knowledge, the golden cloud of understanding, the marvellous foliage of logic and reasoning; let your hands carry the flowers of virtuous action - the Lotus of Duty, the Rose of Purity, the Jessamine of Faith, the Lily of Sacrifice, for no action which is not duty, which is not pure, which does not deserve faith and does not evoke sacrifice is worthy of your handling. Make yourselves ready then, do not waste your time.



सत्यमेव जयते

SIR V. BHASHYAM IYENGAR

INTRODUCTION.

In his Convocation Address to the graduates of the Madras University on 28th March, 1893, Sir V. Bhashyam Iyengar (then the Hon'ble Rai Bahadur V. Bhashyam Iyengar) said :

In conclusion whatever your task in life, let your motto be 'be just and fear not'. All of you cannot be equally learned or equally fortunate, but there is nothing to prevent all being equally *honest* and attentive to duty. 'Knowledge is a steep which few can climb. But duty is a path which all may tread.'

These words form 'the real key to the man's character'. Fearless devotion to duty was the keynote of his long and honourable life.

His Life

Sir V. Bhashyam Iyengar was born in January 1844 and belonged to the well known Vembakam family which has contributed so largely to the efficient and valuable service of the public and the State. After a distinguished college career and a period of Government service as Registrar he appeared for the B. L. Degree examination of the Madras University and took the first place in the first class. In 1872 he joined the bar and made his mark in the new line almost immediately after he entered it. He was the apprentice, and, afterwards, the junior of Mr. P. O. Sullivan, a former Advocate-General. Mr. Sullivan was very much struck with the remarkable legal erudition and subtlety of Sir V. Bhashyam Iyengar and predicted that one day he would become the Advocate-

General. In a very short time Sir V. Bhashyam Iyengar came to the top of the profession and his income distanced all competition during many years. At a comparatively early period of his career he was appointed as a member of the Madras Legislative Council by the Madras Government and much of the provincial legislation bears the impress of his mind. In the Legislative Council he was often required to draft bills, and those who know the work done by him there bear testimony to his supreme skill as a draftsman of legislative enactments. We may refer to his Hindu Gains of Learning Bill which however did not become law. He made the discovery that a Vakil was duly qualified to be an Advocate-General, and an appreciative government, recognising his superior talent and merit, conferred the Advocate-Generalship upon him.

He opened the Gopala Row Library at Kumbakonam on 6th May 1895. He was the first member of the Indian Bar to receive the distinction of knighthood. He was appointed to act as a judge of the Madras High Court on 8th March 1901, and he became a permanent judge on 1st August 1901. He accepted the office at great pecuniary sacrifice. He entirely fulfilled the expectations of all by the learning and impartiality and independence which characterised his judgments during the period of two years and nine months when he was on the bench. In January 1901, he resumed his practice at the bar. In November 1908, he was arguing on a Monday a heavy appeal before the Chief Justice Sir Arnold White and Mr. Justice Abdur Rahim when as he was returning during the mid-day adjournment he fell down unconscious and had to be carried to his chamber. He lingered for two days and at 7 p.m. on 18th November 1908 the great career was closed by death.

HIS TRAITS

In personal life he was simple, unaffected, and courteous. His tall figure dressed in a garment reaching to the feet could often be seen in the Luz in the mornings in the course of his morning walks which he used to take regularly. Though he was reserved by nature and was a man of few words and few friends, he had an open ear to all that went on about him and his attachments were fast and warm. In the domestic circle and in the wider circle of relations, he was an ideal man. He did not take any prominent part in the social or political movements of the day, either on the one side or on the other, because his nature was one of singular balance and he had hence the merits as well as the defects of that rare quality.

As a lawyer he was without a rival in his day for learning and subtlety and a rare gift of lucid, accurate, and exhaustive statement of propositions of law. He was not a brilliant forensic orator and advocate but he was a profound lawyer and jurist. He could prick the bubble of a glittering but unsubstantial legal argument in no time and he was always dreaded by his brethren at the bar on this account. Though he had not a prepossessing delivery or manner or charm of style, his subtlety of intellect and power of analysis, and his cogency of reasoning and precision of language enforced and secured attention and admiration. The writer of this sketch had many occasions to work as his Junior after his retirement from the High Court Bench and to know the mental grasp of that remarkable personality. During the course of his career as a Junior lawyer practising in the High Court, he has listened with fascinated admiration to Sir Bhashyam's subtle arguments developing legal principles from their bases through all ramifications and compelling conviction by the clarity

of his presentation. The days of such advocacy are now gone. The growing weight of authorities is banishing, if it has not already banished, the mental alertness and the clear-thinking logical presentation of legal principles which are after all the real distinctions and pleasures of a life devoted to the study and practice of the science of law. Another peculiar characteristic of his advocacy was his cultivation of an accurate and capacious memory. He never used to make notes and would and could carry everything in that large head of his. He used to argue big and complicated cases without a single scrap of note in his hand, and without losing the thread of his argument. His habit of mental concentration enabled him to think amidst distractions. Taken all in all, we shall not have his like as a lawyer for a long time to come.

As a judge, he came always fully prepared and yet ready to be convinced. Hence it was a pleasure to argue before him if an advocate was well prepared. But if he was ill-prepared or was careless or inaccurate in expression, woe unto him. Once Sir Bhashyam admonished a senior Vakil saying that reading was not pleading. He raised the standard of advocacy by his own adoption of a high standard of work. Though some of his legal opinions have been upset by his successors, yet he settled the law in an incontrovertible manner upon many points and even his *obiter dicta* showered liberally in his judgments are even to-day accepted as valuable guides amidst the increasing complications and labyrinths of Indian law.

TRIBUTES TO HIS CAPACITY AND CHARACTER

Mr. P. S. Sivaswami Iyer (now Sir P. S. Sivaswami Iyer), who was then the Advocate-General, communicated to the High Court the news of Sir V. Bhashyam Iyengar's

death in a speech full of feeling and dignified description of Sir Bhashyam's greatness as a lawyer and as a judge. He said :

One had only to listen to him for some minutes to feel the fascination of that masterly intellect growing on one. It was a privilege and a feast of intellect to hear him unravel the facts of a complicated case or expound a difficult question of law. The dry, clear light of his intellect illuminated every nook and corner of the subject, however obscure. As an advocate, the characteristics which distinguished him were his thoroughness, his wary circumspection, the studied presentation of his cases, his readiness of resources, his ability to pounce upon the weak points of his adversary's case, his tact and his successful management of the judges. . . . As a judge he displayed a remarkable fearlessness and independence. He carefully studied every case, as he was wont to do at the Bar, and his great acumen, width of grasp and mastery of legal principles enabled him to get through his work with great rapidity. He had an unerring legal instinct which led him to the correct solution. He was never technical except for the purpose of defeating a technicality, and was no respecter of precedents which were not supported by principles, and he never shrank from the task of laying down general principles. His judgments were and will be admired throughout India as models of close reasoning, discursive examination of the subjects, elaborate research and precision of language. . . . My Lords, the debt owed by the Vakils to him is immense. No one has done more than Sir Bhashyam to raise the position and prestige of the Vakils.

Equally well-worded and just was the following appreciation of him and his powers in the *Madras Law Journal* for November 1908 :

A great career has closed. A lawyer of deep learning, an advocate of remarkable power, and a jurist of exceptional breadth of view, he has left no equal behind him. He was a man of indomitable will which rarely showed itself in ordinary intercourse with men. Nobody has cultivated to greater perfection, in our experience, the difficult art of accurate expression. The thoroughness with which he mastered the facts and the law of every case he handled, few were in a position to realise and appreciate, who merely witnessed the exhibition of his subtlety of intellect and his resourcefulness of forensic argument. He believed in exhaustive study of every question as the first condition of forensic success. He carried his habits of exactitude so far that while on the Bench he insisted upon every practitioner stating his position with accuracy to the extent of disconcerting even the older members of the profession. He was not a man who took others into his confidence readily, but

his keen judgment of men and things and in departments far removed from his professional interests was of great value to those who were privileged to have access to his inner circle of acquaintance. He was singularly fair in his judgment of others and loath to suspect or to attribute questionable motives to others when their character and conduct were under discussion. He had a kind heart behind an almost icy reserve of manner which sympathised with the difficulties or sorrows of those who were in contact with him. He was great as an advocate if the test of advocacy is not the mere literary excellence of form or the impassioned oratory calculated to get verdicts from juries, but the art of captivating and capturing the intelligent listener anxious to arrive at a correct conclusion upon the matter placed before him. His death has left a void not easy to fill in the legal world. His name will live for generations to come, as one who was an ornament to the profession to which he belonged and raised it to a level which could not have been dreamt of when his connection with it began.

HIS JUDGMENTS

We shall refer here to a few of his learned judgments upon points of general interest. Though some of his opinions have been modified or departed from in the course of the subsequent development of the law, yet his judgments are universally recognised as a storehouse of sound legal opinions on many matters connected with Indian law.

In regard to Hindu law, we may refer to the well-known case of *Sudarsanam Maistri v. Narashimhulu Maistri* (I.L.R. 25 Madras 149) in which he discussed the origin and nature of the Mitakshara doctrine of joint family property. In I.L.R. 25 Madras 351 he held that, as the widow's absolute power of disposition over the income derived from the widow's estate is now fully recognised, she will be presumed, in the absence of an indication of her intention to the contrary, to retain the same control over the investment of such income. In I.L.R. 25 Madras 690 he discusses fully and elaborately the rights of a purchaser from a member of an undivided Hindu family. In I.L.R. 26 Madras 133 he decided that lameness which is not congenital is no bar to the right of inheritance.

which a member of an undivided Hindu family ordinarily possesses. In I.L.R. 27 Madras 13 he held that there is no text of Hindu law under which an illegitimate son of a Hindu, by a woman who is not a Hindu, can claim maintenance. In I.L.R. 27 Madras 32 he decided that an illegitimate member of a family, who is not entitled to inherit, can be allowed only a compassionate rate of maintenance and cannot claim maintenance on the same principles and on the same scale as disqualifed heirs and females who have become members of the family by marriage; that the presumption as to paternity in section 112 of the Indian Evidence Act only arises in connection with the offspring of a married couple; and that a person claiming as an illegitimate son must establish his alleged paternity in the same way as any other disputed question of relationship is established. In I.L.R. 27 Madras 243 he held that, independently of the debt arising from the original transaction, the decree against a Hindu father, by its own force, created a debt as against him which his sons, according to the Hindu law, were under a pious obligation to discharge, unless they showed that the debt was illegal or immoral. In I. L. R. 27 Madras 326 he held that there was no distinction between a mortgage for an antecedent debt and a mortgage given for a debt then incurred.

Among his noteworthy decisions bearing on procedure, evidence and limitation, we may refer here to the decision in I.L.R. 25 Madras 300 where he held that when a suit for redemption has been instituted and a decree for redemption has been passed therein, but not executed, a second suit for redemption is not maintainable for the redemption of the same mortgage. In I.L.R. 26 Madras 760 he dealt exhaustively with the law of *resjudicata*. In

I.L.R. 27 Madras 377 he held that, where a court finds that a next friend does not do his duty properly, it is its duty not to permit him to prejudice the interests of the minor, but to adjourn the suit in order that some one interested in the minor may apply on his behalf for the removal of the next friend, and for the appointment of a new next friend, or in order that the minor plaintiff himself may, on coming of age, elect to proceed with the suit or withdraw from it. In I.L.R. 25 Madras 7 he held that oral evidence and evidence of conduct to show that a sale was only a mortgage was not admissible under section 92 of the Indian Evidence Act. In I.L.R. 26 Madras 91 he held that time runs for execution only from the date of the decree on appeal. In I.L.R. 27 Madras 192 he dealt with the nature of acquisitive and extinctive prescription as between two branches of trustees.

We shall now refer briefly to a few other decisions bearing upon miscellaneous matters. In I.L.R. 24 Madras 421 he discussed in a learned elaborate manner the meaning of agriculture. In I.L.R. 25 Madras 183 he held that in a case of insurance the warranty by the assured operated as a condition precedent to the attaching of any risk under the policy that every statement and allegation contained in the declaration was substantially and in fact true, and that the question for the Court to consider was not the materiality or otherwise of that statement, but its truth. In I.L.R. 26 Madras 514 he held that possession is, under the Indian, as under the English law, good title against all but the true owner. In I.L.R. 27 Madras 28 he held that, though a vendor's right to sue for the purchase money may be barred, he can retain possession till the buyer pays the price, because his lien is not extinguished under section 28 of the Limitation Act. In I.L.R. 27 Madras 211 he held

that the maxim "*quicquid inaedificatur solo solo cedit*" does not generally apply in India and that a tenant who erects a building on land let to him can only remove the building and cannot claim compensation for it on eviction by the landlord.

We shall now make a fuller reference to his great judgments on a few matters of general public importance and interest. In L.L.R. 25 Madras 635 he held that, when a street is vested in a Municipal Council, such vesting does not transfer to the Municipal authority the rights of the owner in the site or soil over which the street exists; that it does not own the soil from the centre of the earth *usque ad coelum*, but as the exclusive right to manage and control the surface of the soil and so much of the soil below and space above the surface as is necessary to enable it to adequately maintain the street as a street; and that it has also a certain property in the soil of the street which would enable it as owner to bring a possessory suit against trespassers. At pages 646-8 he summed up the result of his discussion of the law on the point thus:

Though the principle of the decision in *Corerdale v. Charlton* (L.R. 4 Q.B.D. 104) in so far as it lays down that some kind of property in the street is vested in the urban authority, is not shaken by the decisions above referred to, yet its authority as to the nature and extent of such property is considerably shaken. The conclusion to be drawn from the English case-law is that what is vested in urban authorities under statutes similar to the District Municipalities Act is not the land over which the street is formed, but the street *qua* street and that the property in the street thus vested in a Municipal Council is not general property or a special property known to the Common Law, but a special property created by statute and vested in a corporate body for public purposes, that such property as it has in the street continues only so long as the street is a highway and that when it ceases to be a highway, by being excluded by notification of Government under section 23 of Act IV of 1884 or by being legally stopped up or diverted, or by the operation of the law by limitation (assuming that by such operation the highway can be extinguished), the interest of the corporate body determines; and that the clauses directing or authorising the

corporate body to sell have reference only to property absolutely vested in it, but as to property in which its interest ceases, it has nothing to sell.

In I.L.R. 26 Madras 268 he held that the Civil Courts have jurisdiction to determine whether a grant of land, alleged to have been made by an officer on behalf of the Crown, is binding on the Crown or persons claiming under it subsequent to the grant; and that the mere fact that the alleged grant purports to have been made under the *darkast* rules does not affect that jurisdiction. He held further in that case that a grant which purports to have been made under the *darkast* rules by an officer empowered by them to make it is a grant made by a person authorized in that behalf and has the validity of a grant made by the Governor-in-Council and that such an officer is an agent generally or specially appointed in that behalf, and his acts, if within the scope of his authority, are as binding on the Crown as if they had been done by the Governor-in-Council. At page 283 he says:

When the proposal of an applicant is accepted by an officer duly authorised in that behalf by the *darkast* rules and the acceptance is communicated to the applicant, there is a valid contract and disposal of the land, unless the grant was procured by fraud, misrepresentation or mutual mistake as to any matter of fact essential to the agreement. (Indian Contract Act, sections 17, 18 and 20). The grant, therefore, cannot be annulled or revoked by the officer who made the grant, by his successor in office or even by the Governor-in-Council. Under the very terms of the authority conferred upon the various classes of officers, a grant of land made by any one of them within the scope of his authority is subject only to one condition, i.e., it may be revoked or annulled by an officer of a higher grade on appeal preferred to him.

Another equally well-known and learned decision is I.L.R. 26 Madras 339 about the enfranchisement of service teams. He held that, when a personal inam is enfranchised by the imposition of a quit-rent, the resumption by Government simply consists of so much of the assessment or *melvaram*



SIR V. BHASHYAM IYENGAR

as is equal to the quit-rent, neither the land nor the assessment in excess of the quit-rent being resumed; that the enfranchisement of a service inam does not operate as a resumption and fresh grant by Government subject to the payment of a quit-rent, any more than it is so in the case of the enfranchisement of a personal inam; that it stands on the same footing so far as the family in which the village office is hereditary is concerned; and that the enfranchisement only converts the inam property into ordinary property. At pages 345-6 he says:

The declared policy of Government, when the Inam Commissioner was appointed in 1859 and rules framed for his guidance, was to waive its right of resumption and enfranchise personal inams and convert them into ordinary heritable property and forego its reversionary right in consideration of the holder of the inam agreeing to pay a quit-rent the rates of which varied with reference to the value and prospect of the reversionary claim of the Government in each case. In certain cases, which it is unnecessary to mention, the holder of the inam had no option in the matter, but, in other cases in which it was optional with the holder either to submit to enfranchisement or not, the Government reserved its right of resumption if the holder did not care to have his inam enfranchised. Even when the Government exercises its right of resumption, it rarely, if ever, resumes the land even if the land itself had been granted as inam. It simply resumes the full assessment and it does so by the imposition of full assessment upon the land and converts it into ordinary ryotwari tenure. There is really no object served in resuming the land and making a fresh grant of it subject to full assessment, either to the holder or to a stranger. This is so even in the case of religious (devadayaam) and other charitable (dhermadayaam) inams (which were simply confirmed by the Inam Commissioner subject to the conditions of the original grant), when, by reason of the grantee's family failing to fulfil the objects and conditions of the grant, Government have the right to resume the same. According to the theory applicable to grants of land or land-revenue made by the ruling authority in this country for a specified religious or charitable purpose, the grant is not construed as an out-and-out grant, but as reserving a reversion when the particular trust fails and the doctrine of *cy pres* is therefore considered inapplicable to them. It is open to the ruling power to resume the grant and appropriate it for other religious or charitable purposes or incorporate it with public revenue. In the latter case Government simply imposes full assessment without extinguishing the right of the family of the

grantee in the land and making a fresh grant of it. When a personal inam is enfranchised by the imposition of a quit-rent, the resumption by Government simply consists of so much of the assessment or mel-waram as is equal to the quit-rent, neither the land nor the assessment in excess of the quit-rent being resumed.

In I.L.R. 26 Madras 554 he laid down the law as to processions on the highway with his usual learning and completeness. He held that no assembly can be "lawfully engaged" (within the meaning of section 296 of the Indian Penal Code) on a highway, unless it be established or can be reasonably presumed that the dedication of the highway was subject to the user, and that the user of a highway as a place of worship is not the legitimate user of it as a highway. He says at pages 570 and 571 :

Within the meaning of section 296, Indian Penal Code, no assembly can, in my opinion, be lawfully engaged in the performance of religious worship or religious ceremonies on a highway unless it be established or can be reasonably presumed that the dedication of the highway was subject to such restriction and use. Otherwise persons riding on horses or driving in vehicles at the time and thereby effectively disturbing the worship by interrupting or suspending the same will be liable to conviction under section 296, Indian Penal Code. In a country where there are so many rival sects and religions intolerant of one another, it will be impossible to presume a dedication of a highway by members of one sect or religion for religious processions or worship to be conducted on such highway by followers of other rival sects and religions. If it be asked what the ancient common law of India was as to the use of public streets and highways by different races, castes and outcastes and as to their use for religious and other processions by various sects, the answer would obviously be one which, according to the law as administered by the British Courts, could not be tolerated for a moment. Using the highway as a place of worship is not the legitimate use of it as a highway 'for the purpose of using it in order to pass and repass or for any reasonable or usual mode of using the highway as a highway'. (Harrison *v.* Duke of Rutland; Hickman *v.* Maisey; see also Dicey's Constitutional Law, Fourth Edition, page 430), and the conversion of the highway, though temporarily, into a place of sectarian worship, amounts, in law, to a trespass upon the freehold in the soil of the highway and in cases in which there is a statutory vesting of the highway in a local authority also to a trespass upon the highway itself. . . . No doubt in every country and particularly in this country highways are by sufferance used for purposes which

are decidedly in excess of their legitimate and reasonable use as a highway—especially when such use has been customary—and the same is tolerated and no notice is taken of the trespass thus committed on the highway and the freehold in the soil, so long at any rate as such use of the highway does not cause any special or serious inconvenience or obstruction. But doing a thing by sufferance is one thing and claiming it as lawful and invoking the aid of the executive authority to do it, as of right, is quite another thing.

This view of the law was no doubt not upheld after the Privy Council decision in I.L.R. 30 Madras 185 but every one can realise that there is a great deal to be said in favour of the view. In I.L.R. 27 Madras 386, (Full Bench) he held that penal assessment could not be collected as land revenue. He says at page 396 :

The right of Government to assess land to land revenue and to vary such assessment from time to time is not a right created or conferred by any statute, but, as stated in my judgment in *Bell v. Municipal Commissioners for the City of Madras* is a prerogative of the Crown according to the ancient and common law of India. The prerogative right consists in this, that the Crown can by an Executive act determine and fix the *Rajabhuagam* or king's share in the produce of land and vary such share from time to time. This necessarily implies and pre-supposes that the occupant of the land has an interest in the land and is entitled to the occupant's or ryot's share of the produce as distinguished from the king's share. The same idea is often expressed in the words that the Crown is entitled to the *melwaram* in the land and the ryot to the *kudiwaram*. It therefore necessarily follows that the Crown cannot impose land revenue upon lands in which, according to its own case, the person in occupancy has no title or interest or *kudiwaram* right.

He then sums up his view thus at page 398 :

The immemorial and common law prerogative of the Crown in India is only to the *Rajabhuagam* or king's share in the produce of the land and the land revenue or assessment now levied on land represents the king's share in the produce and the Courts have no jurisdiction to question the rate or share that the Executive Government may fix at the periodical revision of assessments but a share of the produce—however high the share or rate may be in the relation to the total produce—cannot exceed the produce. An assessment therefore, which is prohibitive and manifestly in excess of what the land may produce and is professedly out of all proportion to such produce, is clearly *ultra vires* of Government

and such action of the executive is not exempted from the jurisdiction of the Civil Courts.

In regard to the criminal law he laid down clearly in I. L. R. 26 Madras 198 that, unless there is sufficient *prima facie* evidence and a reasonable probability of conviction, the Court giving the sanction or upholding it will not be properly exercising the discretion vested in it by law. He says at page 117:

The according of sanction or upholding the same when a sufficient *prima facie* is not made out will, in the majority of cases, simply lead to waste of public time and subject the person against whom the sanction is given to serious annoyance and expense which he can in no way be compensated for even though he be honourably acquitted.

In the famous *Ranga Reddi* case reported in I. L. R. 24 Madras 523 he made strong remarks at page 548 about the sending of anonymous or pseudonymous communications to judges pending trials by them. He said:

The authors of these three letters, whoever they may be, have committed a grave contempt of court in sending by public post private communications to a judge of this court with the sole and deliberate object and set purpose of influencing his decision in a judicial matter of the highest importance to the public. These persons and others similarly disposed to tamper with justice ought to know that it is a high contempt of court to communicate with or seek in any way to influence a judge upon the subject of any judicial matter which he has to determine, and that a Chartered High Court in India is a Superior Court of Record which can summarily deal with contempts of Court though the same be committed otherwise than *in facie curiae*, which has the power to punish the offender by commitment in a summary way, a power which no doubt will be sparingly used but will certainly be used when there is the 'pressure of public necessity' and even then not to vindicate the dignity of the Court but in the interests of justice and in view to repress tampering with justice.

HIS VIEWS ON EDUCATION

In his excellent convocation address he deprecated the commercial conception of education and pleaded for a loftier conception of the scope and function of education in life. He said: "No system of national culture in which

education is not regarded as a social and humane training, that serves to elevate the individual and improve the nation, can ever take root or prosper." He also emphasised the importance of attention to physical culture in India. In this matter he gave healthy advice which is as valuable to-day as it was then. He said :

It is an encouraging sign of the times that athletics and field sports are beginning to be recognized in our country as an essential part of education. Do not suppose, however, that they are new to India. In some form or other, even as religious observances, physical exercise has always been practised by orthodox Hindus, *the fair sex included*. And here, let me give you a few hints from experience. Regular physical-exercise in some form or other is absolutely necessary for vigour of body and mind. Do not suppose that it can be had only by means of fashionable and costly games. The cheap indigenous sports need not be despised.

He removed another current and absurd misconception when he said in the same address that "this ideal of University education is by no means foreign to India. It was typified in the old system of pupils or *sishyas* receiving, in the hermitage or home of their teacher or *guru*, lessons in high-class Oriental philosophy and religion".

In regard to the modern University education he pointed out how the University of Madras is "purely an examining corporate institution". He said further: "At all the older University centres in India, a feeling has grown of late that the University should be not merely an examining and degree-conferring corporation, but should aim at the higher and nobler function of teaching." To promote the proper University spirit (to use a great phrase of President Wilson), he advocated the founding of a University library, adequately representing all departments of literature, science and art, and freely accessible to all its fellows and graduates. He pointed out in a fine passage why the Indian intellect is now

comparatively barren in the realms of literature, philosophy and science, and when that sterility will cease :

A talented Indian, who has had the advantage of an English liberal education, and entered a particular profession, receives in the very exercise of his profession the best training possible, and rises to the high distinction. But the case is different in speculative and original branches of knowledge and thought. A long time must elapse before Indian students of Western literature, philosophy and science can become so steeped in them as to distinguish themselves by original research. Ancient India did produce her renowned poets, philosophers, and theologians, and I am sure the past will repeat itself in the future. As our Universities rear up a band of enthusiastic and devoted scholars, to whom learning will be their lifelong vocation, modern India may compete with the civilised West in literature, philosophy and science as well.

Sir V. Bhashyam Iyengar has expressed himself clearly and unhesitatingly in favour of the maintenance and extension of higher education in India. In words, as wise as they are weighty, he said :

In certain quarters, a distrust has now and then been expressed as to the effect of Higher Education in this country and as to the policy of the State in maintaining and aiding it. It is recklessly asserted that it produces a band of discontented and disaffected agitators. If there were any truth in this assertion, there must certainly be something radically wrong in Western literature and science. To my thinking, nothing can be a greater libel upon their noble literature and science, or upon educated Indians, than such a baseless cry. Among the manifold blessings that England has conferred upon India, nothing stands, or can stand, higher than the gift of Western knowledge. She has been bestowing on the sons of India some of her most cherished institutions and among them, the liberty of speech and the freedom of the press.....I have no hesitation in saying that Western education is the strongest foundation on which the loyalty of the Indian subjects to the British Throne rests.

Again in the same address he said :

It is to be sincerely hoped that there is no cause for the apprehension that Government, in its desire for the promotion and spread of primary education, will practically withdraw its support to Higher Education. The inevitable result of such a step will be a marked deterioration in its quality. Though we hope that the time will arrive when the people of India will become sufficiently enlightened and advanced to undertake the task of national instruction, by private resources and private organisation, subject only to a general control by the State, yet it must be confessed that

such hope belongs to the distant future. In a country where the requirements of the Public Service and of the learned professions, no less than the cultivation of social virtues, demand it, Higher Education ought not to be left to suffer under a narrow spirit of financial economy. Any amount of money spent by the State in the advancement and extension of higher education will be amply repaid. It will further the cause of good government, and facilitate the introduction by government of all reforms calculated to develop the resources of the country and advance the people.

At the same time he was well aware of the urgent need of primary, secondary, and technical education. He said :

The promotion of primary and secondary education is as essential, as higher education is, to the welfare of the nation. All kinds of education, whether primary, secondary, higher, or technical have an equal claim upon the State, and one cannot be neglected without prejudicially affecting the rest.

In regard to the methods of education he deprecated the system of inattentive and unattended lectures in the lower classes. He said :

But I am afraid that the majority of the so-called lectures are as monotonous and unimpressive as is the charging of a jury in most of our Indian Courts..... Thus the primary object of education is defeated. The dormant and undeveloped faculties of the youth are not evoked and trained.

He pointed out further another glaring evil :

What is still more to be deplored is that personal influence, as such, of the teachers over their pupils is growing less and less. Under a formal system of learning without catechising, and without, too, any mode of tutorial instruction such as obtains in Oxford and Cambridge, few are the opportunities that teachers have of coming in contact with the minds and hearts of their pupils.

Sir V. Bhashyam Iyengar pointed out further that education is after all only the means to perfect self-culture which is a lifelong task and of which the fruition is the attainment of God. He said :

Let me remind you, gentlemen, that Higher Education is not the Highest, that the long course of instruction, which you have received, and which to-day receives the stamp and recognition of this University, is only preparatory to the great work of self culture which lies before you. Even the highest University degree is but a basis on which the edifice of knowledge has to be built. The education which you have received will be of little avail to you and

to the society to which you belong, unless you deepen and widen the perennial stream of knowledge. The culture of the mind is a lifelong task.

HIS VIEWS ON PROFESSIONS AND CAREERS

He pointed out in the clearest terms that diverse careers should be chosen as means of public service and private livelihood. He said :

The question is often asked, what are the graduates to do if they do not enter the public service or one of the learned professions? The simple answer is that they must betake themselves to those callings which they would have exercised if they had not received their University education and pursue the same with greater efficiency and success than they would without such education. If the University should draw men away from their numerous avocations in life and drive them all into the public service and the legal profession, it would indeed be a great evil to the country. There is ample scope for the employment of educated talent in agriculture and in the expanding industry, trade and commerce of the country.

Another very important aspect emphasised by him is the need for realising that the larger share in the administration of the country coming into Indian hands implies heavier responsibilities. He said :

The temptations to err and to abuse power are great, nay, greater and more insidious than they ever were. It is, therefore, of the highest importance that you should cultivate betimes virtues that will beset you for your new trials, virtues not only of the amiable kind, highly useful as these must be, but the sterner ones of the strictest integrity and uprightness and force of will and decision of character needed for the most trying of situations.

Another valuable quality needed was also prominently stated by him. It is "that a public servant holding a responsible office should not only be honest and upright in fact and truth, but that he should enjoy the public reputation of being what he is". His observations on this point are and will be a source of guidance always.

From an administrative point of view, a good reputation is as essential to good character, for, very often no less evil results from one's bad reputation than from one's actual corruption. When one's reputation does not correspond to his real character, he has, in many cases, only to blame himself for it. It arises from a habit of

exclusiveness which often goes with misplaced confidence in a privileged few or in some subordinates, or from unworthy associations. A little tact and judgment are all that is needed to correct an erroneous popular impression. Open and free intercourse with people easily removes the unfavourable opinions which they may have hastily formed. Accessibility to people and openness to conviction will always help a public officer over difficulties, and secure that popular esteem to which his real character entitles him.

Equally noteworthy is his view that a public official's private life should be pure and stainless. He said :

It is difficult to believe for a moment that a person whose personal character is degraded, and who, in his relations and dealings with his fellow beings, especially with those less fortunate than himself, is mean and unscrupulous, can possibly be an honest-minded official or command that esteem and confidence of the people which are indispensable to his efficiency and usefulness as a public servant..... Those of India's public servants who are not fit to help in this noble task, whose private lives are not in consonance with the high official positions entrusted to them, positions which in India more than in any other country, secure to them almost the highest social status, justly deserve the strongest condemnation.

Equally precious is his utterance that we must be on our guard against the bureaucratic system making machines of us all and leading us to substitute the spirit of domination for the spirit of service.

The bureaucratic system in this country is not calculated to widen your sympathies or enlarge your views. An administrator of a Taluk, Division, or District is often apt to fancy that he is a king in miniature and as such 'can do no wrong' and that any person criticising his official acts in the press or elsewhere is guilty of disloyalty or disaffection to the British Throne. When you rise to any such position bear in mind that you are, as your designation significantly denotes, only a servant of the Public, and that it is your duty to consult always the interests of the people and promote their good and not domineer over them as their lord.

In regard to the profession of law of which he was such a distinguished ornament and which in every civilised community is the bulwark of order and stability and the slow and sure and steady guide of progress and the gradual adaptation of human life to higher ends, he gave valuable advice which is as true and precious to-day as it was two or three decades ago and which will be a noble guide to

professional conduct and integrity and efficiency at all times. He pointed out that questions of law arise only in a small percentage of cases and that the more important trait to be acquired is the habit of sifting evidence. He stated that there was not much improvement in handling questions of fact and said :

The much neglected art of examining witnesses should be cultivated ; and for this purpose you must have not only an insight into human nature, but a thorough familiarity with the intricacies of your various religious, communal and caste institutions, and of land tenures and with the peculiar habits and usages of the different sections of the people.

He condemned in strong terms the tendency to bully witnesses in cross-examination :

It is these and the like causes that operate on the minds of respectable persons, to try, if possible, to avoid being cited as witnesses and, if cited, to evade giving evidence. Until there is a decided change for the better in the treatment of witnesses, and the art of examination and cross-examination is better attended to and cultivated, there will be no improvement in the quality of the oral evidence secured in courts, especially in criminal cases. Whether you become a judge or advocate, you should do the utmost that may lie in your power to effect such improvement.

In equally strong terms he condemned the often manifested judicial tendency to reject the entire oral evidence in cases :

He (the judge) then decides the case, basing his judgment on a speculation of probabilities. This is certainly a most dangerous doctrine and strikes at the very root of the administration of justice ; for, in most cases, you have no other means of arriving at the truth. It is because much ability, skill and experience are required in scrutinising evidence, that trained judges and learned professional men are, at a great cost, employed in the administration of justice, and not simply because questions of law may have occasionally to be decided, which, if they go wrong in the court of first instance, may more easily be corrected than questions of fact in the Court of Appeal.

In regard to the conduct of cases he showed that a lawyer is solely responsible for the conduct of the case and should not merely be the litigant's mouthpiece. He said :

The anxiety of the client is centred solely in the *result* of the case, but yours ought to be in the *conduct* thereof. The Indian client is, generally, a very reasonable being. If he wins the case, he will invariably feel grateful to you, but if he loses, he will ascribe it to his ill-luck, and not blame you, unless he thinks it was due to your neglect or mismanagement. Be a zealous and earnest advocate, but allow not your advocacy to be hampered by your anxiety about the result. I say this no less in the interests of your client than in your own. A suitor has a great advantage in securing the zealous and earnest advocacy of one who is perfectly unconcerned about the result.

He pointed out also that vain hopes should not be held out to clients and that he should not be frightened by needless discouragements. He said: "The client is entitled to the benefit of the judge's judgment, and you should not take the responsibility of substituting yours for his." He insisted on the need of full and careful preparation of cases and his remarks on this matter are worth our full attention as life changes but slowly in India and the *vis inertia* is a very powerful factor in professional life as in general life.

You must go to court prepared with your cases, and not, as is often the case in the Mofussil, conduct the case as best you can, from the instructions which you may be able to get from your client or his agent, in *open* court, during the trial. Without previous preparation you can have no plan, and the Judge cannot follow you. The consequence is that very often, the trial of a case, including the argument, extending over several days, is gone through as a mechanical process. Judgment is reserved, not because the Judge has an intelligent doubt or a question of law or fact involved in the case, but because he has to understand the case as best he can, and analyse and weigh the evidence after calmly going through the whole record. This deprives the suitors of the inestimable advantages of a judicial trial, and is but an apology for the English system.

THE REGULATION OF LIFE

He gave sound and wholesome advice the neglect of which has brought, and is bringing, many valuable lives to ruin. The inattention to health which is the cause of early mortality among our public men could not be too severely condemned. He said:

While avoiding the native quack, guard yourselves against the seductive advertisements of patent medicines that are now deluging the country.....Do not despise any rule of life or observance conducive to health and cheerfulness of mind, simply because it happens to be associated with, and based upon, rules of caste or religion, any more than you would give up inheritance because of its religious basis in the Hindu law.

His admonitions about the need of hobbies and second interests in life are equally valuable. He said :

In addition to general literature, It is well that you pursue, if only for pleasure and recreation, a special study of some one science or art. Such a course will not only give you an interest beyond the narrow sphere of your vocation and serve to relieve the ennui of life, likely to be engendered by exclusion, but may enable you to contribute your mite to the stock of human knowledge; and also to spend the evening of your life, when you have retired from active service, in enjoyment to yourself and with profit to your countrymen. Many an important scientific discovery has been made by non-experts. To those who complain of want of time, I have only to say that the busiest always find time for more; and that small intervals snatched from even the heaviest pressure of professional business will, in the long run, give ample time for considerable accumulations of knowledge.

We must however guard against aimless reading. The cataract of printed stuff is increasing in volume and intensity. A reader should not be as Lowell describes :

A reading machine ever wound up and going
He mastered whatever was not worth the knowing.

Sir V. Bhashyam Iyengar said : " Because a man's thoughts appear in print, they cannot be more worthy than the man himself. Because a book has been newly published with an attractive title, and reviewed favourably, in not a few cases by the author himself, in some irresponsible journal, you should not be tempted to buy and read it." Further, reading should not only be select and informing but must lead to independent and original thought and must be applied to life. He said : " Remember that after all reading is at best a passive self-culture. Your delight must be to think."

He advised every one to cultivate also the habit of speech by which in private conversations and public addresses a higher life could be stimulated in the country. Many a learned man buries and entombs his learning in himself because he has not learnt to exercise "the precious gift of the tongue". How true, alas, is what he says--how true, or rather how much truer, to-day,--when education is even more on stilts than before and the life of educated men is *in nubibus*. He said :

In the present system of education there is little scope for the exercise of your conversational powers, and the exclusive life of the students of our public schools and colleges gives them few opportunities of cultivating the power of intelligent conversation in their mother tongue with their relatives, friends and countrymen. And if we look at the matter aright, how incalculable is the loss caused by this neglect of conversational powers. Whether in the domestic or the social circle, or in the wider sphere of citizenship, how are your higher intelligence and culture to be useful to be productive of any good at all, unless you can effectively wield your mother tongue in oral communication with those for, and amidst whom, you work. Remember also that the great masses of our population can be reached only by the ear, and if you cannot succeed in making yourself heard by them, you can produce no impression on them; and to most of you the opportunities of disseminating knowledge, by means of conversation, are infinitely greater than by writings or lectures. Remember also that all eloquence, strictly speaking, is oral, and if you wish to be the representatives and leaders of the people, you must work through and by the language which will go home to their hearts.

Last but not least, he warned us not to neglect the "much neglected virtue, intellectual honesty and candour". He said : "Never pretend to know, or delude yourself into the belief that you know, what you do not know..... People have recourse to a thousand devices to conceal their ignorance, and thereby often neglect opportunities for dispelling the same..... It will result in ignorance of your own ignorance."

HIS VIEWS ON SOCIAL REFORM

He held settled and mature views on Social Reform and advocated moderation and measure. He said :

No society has ever improved by a revolution. Revolution may bring about a social dissolution, but cannot construct. In our zeal for reform, and in the vehemence of our individual convictions, we are apt to overstep the bounds of wisdom and prudence, and destroy when we mean to reform. Let us not, therefore, forget the importance of the society of which we are but units..... If the reform you aim at is to be real and lasting, you must take the community with you ; and how can this be done unless you first study their opinions, prejudices, their strength and weakness so as gradually to win them over to what you hold and believe to be right?..... It is, of course, open to those who wish to secede from the Hindu community to do so, and not actively concern themselves with its social advancement or to claim its privileges.

He advised all lovers of social improvement to endeavour to create a healthy public opinion and warned them to remember that " the ruling convictions of mankind are often swayed by feeling, imagination, usage and tradition more than by logic and reason ". Then in a passage full of quintessential wisdom, he said :

In all questions of social reform, as in politics, we have to look to the practicability, in the near future, of the change proposed, and, not infrequently have we to choose between two evils. Do not despise small reforms for which society may be prepared, simply because they do not satisfy your ambition. On the other hand, reforms which are small in themselves, but are regarded as revolutionary by the people, are not worth your attempt, . . . We ought to be able to effect it (reform) without seeking the interference of the Legislature in concerns which in all civilised countries are not generally attempted to be regulated by Positive Law. Do not neglect an existing institution which may be utilised to the greatest public good. Let your endeavour always be to arrest its decay and extinction and to improve upon and refine it.

HIS VIEWS ON POLITICS

He said of political education and political life in general: " In civilised countries one of the chief objects of the State is to give a political training to its subjects. It is but right that he (the educated Indian) should have political aspirations and take an active

and intelligent interest in all movements of a political nature." He warned us however against "the error of supposing that polities needs no study, and that every man is a born politician". He showed how educated Indian is the real representative of the millions of India.

There are some who are fond of saying that the legitimate sphere of action for the educated native is the field of social reform and not of politics; and that we should not be taken as representing the views and sentiments of the dumb millions. In the very nature of things, the so-called dumb millions can be represented only by the educated natives, and it is incumbent upon the latter to enlighten the masses and educate their feelings and sentiments.

We may well remember in this connection his warning about our usual error in using "educated" as implying education in the English tongue. He said: "And here we have to correct ourselves of a fatal error that has crept into fashionable use by the conventional sense in which we use the word 'educated' to designate only those who have received English education, as if all our countrymen, ignorant of English, including the best cultured in Oriental literature and philosophy, are to be classed as uneducated." In regard to the political future of India, he emphasised that popular institutions are now on their trial in India and that we must be as fully alive to the responsibilities as to the privileges of the high political life. He said well:

Popular election can work successfully only when every individual vote, though in itself a drop in an ocean, is realised to be of sufficient importance to be given, and to be given too, under a sense of public duty, and not from considerations of race, caste, kinship, or friendship.

HIS RELIGIOUS VIEWS

He was not a deep or profound student of religion and never obtruded his religious views on others. But his equanimity of temperament, the purity of his private life, and his general courtesy and friendliness were the outer expressions of a sincere religious spirit. He never felt or

declared himself superior to the religious observances of his race and always took interest in the religious movements of the day, though his life was too full of other work to have the dower of high religious learning or realisation.

CONCLUSION

Such was the great career of Sir V. Bhashyam Iyengar and such were his sound and wholesome views on matters vitally affecting the public welfare. We cannot better conclude this brief and inadequate sketch than by quoting the noble passage with which we began it and which concludes in a fitting and admirable way his excellent convocation address :

In conclusion, whatever your task in life, let your motto be : 'Be just and fear not.' All of you cannot be equally learned or equally fortunate, but there is nothing to prevent all being equally honest and equally attentive to duty.

Knowledge is a steep which few can climb,
But duty is a path which all may tread.

Soon after Sir Bhashyam Iyengar's death, leading members of the Madras Bar decided on a suitable memorial and subscribed to it. The memorial took the form of a statue which was unveiled exactly twenty-one years after his death, *i.e.*, in November 1929. Erected opposite to the High Court, it is a fitting public memorial and a tribute to the memory of a great lawyer and jurist. Sir Sivaswami Aiyer and Mr. T. R. Ramchandra Aiyer who had known the late Sir Bhashyam in his palmiest days of advocacy, bore eloquent testimony to his remarkable talents and versatility, and the great esteem in which he was held by his own generation and pointed to the statue as the source of great inspiration to succeeding generations of lawyers.



BUDRUDDIN TYABJI

BADRUDDIN TYABJI

BOYHOOD AND EDUCATION

BADRUDDIN TYABJI was born on the 8th October, 1844. His father was a wealthy Arab merchant settled in Bombay. Tyabji Bhai Miyan Sahib, who dealt extensively with foreign countries, was a very enlightened Muhammadan and though he was the religious head of his community who in those days thought it against their faith to learn English as a Christian language, sent all his six sons to Europe, following them there himself. Three of these sons, Shujauddin, Shamsuddin, Najmuddin, were merchants and extended their father's business in Havre and Marseilles, while the youngest, Amiruddin, remained a gentleman at large. One of them Mr. Camruddin was the first Indian to be articled as Solicitor in England and on his return to Bombay established a large and lucrative business, which is still continued bearing his name. Mr. Badruddin, the subject of this sketch, was next in age. Like his brothers, Badruddin learned Urdu and Persian at Dada Makha's Madrassa and subsequently joined the Elphinstone Institution. After a few years there he had to be sent to France for treatment of the eye. On being cured he went to London and joined the Newbury High Park College in his 16th year. He matriculated at the London University and entered upon higher studies, but these were interrupted by ill-health, in consequence of which he returned to India for a time. Even after recovery, he was

pronounced unequal to the strain of University studies, so that, in the end, he became a law student at the Middle Temple and in April, 1867, was called to the Bar.

AT THE BAR

In November of the same year he set up practice at the Bombay High Court, being the first Indian Barrister of the place as his brother had been the first Indian Solicitor. His initial difficulties must have been great but they yielded to his ability and industry, backed as these were by the powerful help of his brother. Fluency of speech, choice though somewhat diffuse diction, lucidity of exposition, skill in cross-examining, above all, a perfectly dignified and earnest hearing, are qualities which would have ensured success in any case; but when they were combined, as in Mr. Badruddin's case, with high character, sweet manners, and single-minded application, they soon raised him to the front rank in his profession. Two anecdotes deserve to be remembered. A criminal case before Mr. Justice Westropp had ended, thanks to Mr. Tyabji's defence, in acquittal; but the *Bombay Gazette* characterised it in its legal columns as rigmarole and nonsensical. Next day as soon as Court began the Judge said to Mr. Tyabji:

Mr. Tyabji, I am glad to see you here, and also the reporter of the *Bombay Gazette*, as I wish to make some observations upon the report of the case which was concluded yesterday. The paper represents you to have made 'a rigmarole and a nonsensical speech' in defence of your client. As these remarks are not only unfair but likely to do harm to a young barrister, I deem it my duty to observe that, in my opinion, there is not the slightest foundation for those remarks. I consider the case was most ably conducted by you, and that the acquittal of the prisoner was mainly due to the ability and skill with which you addressed the jury.

The other anecdote illustrates the strength of the man, the quality that has been generally acknowledged as char-

acteristic of him both as barrister and as Judge. We take it from an appreciation that appeared in the *Bengalee*:

It is some years since he appeared as counsel for an accused person in a criminal appeal before a Division Bench consisting of Mr. Justice Parsons and Mr. Justice Ranade. The case had excited some sensation at the time and it was during the hot days of May that the two Judges sat to hear the appeal. Mr. Tyabji began his argument with some prefatory remarks giving a general view of the case, and that occupied about half an hour. He then commenced reading the evidence. He had not gone on for more than ten minutes when Mr. Justice Parsons, who always liked a short argument, said:—"We have read the evidence, Mr. Tyabji." Mr. Tyabji met the remark with a cool 'Yes' and went on reading the deposition all the same. Mr. Justice Parsons: "What is the use of reading the depositions and wasting the time of the Court when we have read them all? Better confine yourself to such comments as you may have to make on the evidence." Mr. Tyabji: "I dare say, my Lord, your Lordships have read the evidence but you have read it in your own way. I am here to make your Lordships read the evidence in my way and it is only then that you can follow my comments." And Mr. Tyabji had it his own way. For two days he kept the Court occupied hearing his arguments, with the result that at last he secured an acquittal for his client, and the remark went round the Bar that Mr. Tyabji had given a good lesson on patience to the Bench.

As an advocate the case perhaps which will be most connected with his name is the case of Sahibzada Nasrullah Khan which he conducted with pre-eminent success. It has been said that in that case he exhibited forensic ability and eloquence of the most brilliant order, which reminded his hearers of the great feats of forensic eloquence in the annals of the High Court of Bombay.

PUBLIC WORK

For ten years and more he allowed nothing to distract him from the pursuit of law, putting away the frequent solicitations of Messrs. Mehta, Telang, and Ranade with "that sort of thing is not in my line". But soon thereafter he threw himself heart and soul in the work of promoting education among his co-religionists and remained devoted to that task to the end of his life. He became

Secretary of the Anjuman-i-Islam of Bombay about 1880 and then president and raised the influence of that Institution to be one of the most powerful in the Bombay Presidency.

He also became President of the Bombay Presidency Association, which was another Institution with influence in the Presidency, and was followed in that office by Purozeshah Mehta, Gokuldas Parekh, Narayan Chanderwarker and Sir Dinshaw Wacha. It was in 1879 that he definitely joined that illustrious band of patriots which was Bombay's unique boast. To that band he remained attached to the end. His maiden speech was against the abolition of import duties on cotton goods and brought him great applause. From this time he was in great request at every public meeting, and from the numerous speeches that he made, we may select for special mention those on the Indian Civil Service question, the Ilbert Bill and Lord Ripon.

Addressing a public meeting in Bombay in April 1883, Tyabji spoke on the Ilbert Bill controversy with his accustomed lucidity and exposed the pretensions of the opposition. He said :

Further, gentlemen, what can be greater injustice to the whole Indian community than to declare even the ablest of our native magistrates and judges, no matter what their qualifications may be, as an inferior order of men, incapable of rising to that height of judicial excellence which is supposed to be necessary to try cases against Europeans? Gentlemen, I venture to think that the present state of the law is not only unjust, but it is insulting to us. (Cheers.) It is insulting to us, first because it brands even the ablest, the highest, and the most distinguished of our judicial officers with a galling and a perpetual mark of inferiority. (Renewed cheers.) It is insulting to us because it draws an inviolable distinction between the European and the native members of the same Covenanted Civil Service. It is insulting to us because it exalts the European British subjects into such superior beings as to declare that even the highest of our judicial officers shall be incapable of imprisoning him a single day or fining him

a single rupee; and it is insulting to us because it degrades our own countrymen to such a depth to declare in the very next breath that the same incompetent and unfit magistrates and judges, who are incapable of trying even the most trivial case of assault against an Englishman, are yet fit and competent to try millions of our own countrymen for the gravest charges and even to condemn them to death? (Loud and prolonged cheers.) Gentlemen, the height of absurdity could go no further, and yet forsooth these are the arguments ostensibly put forward for the purpose of defeating this just, generous, and above all extremely moderate and cautious measure.

Meanwhile the Local Self-Government measure of Lord Ripon had been carried into effect in Bombay in 1882, and Sir James Fergusson, the then Governor, nominated Mr. Tyabji to the Legislative Council. His work in connection with the Municipal and Local Board Bills was highly commended at the time and the Governor paid him the compliment of saying that he would have been listened to with rapt attention even in the House of Commons. Close reasoning, clear statement, and studied moderation, than as ever, distinguished his speeches. He shares with such men as Messrs. Hume, Bonnerjee, Naoroji and others the rare privilege of having assisted at the birth of the Indian National Congress which met for the first time at Bombay in December, 1885. Calcutta had its turn in 1886, and when next year Madras had to welcome the delegates, the unanimous choice of the country for the place of President fell on Mr. Badruddin Tyabji.

CONGRESS PRESIDENT, 1887

Never was choice better justified. Three speeches stand out in the memory as giving that Session of the I. N. C. its peculiar glory. Rajah Sir T. Madhava Rao's address of welcome was couched in diction which suggested the evening of the Taj Mahal chisellers, and which an Anglo-Indian journal, broadminded and

generous in those happy days, declared was "such as few persons in the continent of Europe ever speak." For pure dash and brilliancy nothing in the whole range of Congress oratory can equal the short speech by which Mr. Surendra Nath Bannerjee (later Sir) carried the Arms Act Resolution in the teeth of the opposition of such leaders as Hume and Chandavarkar. Inferior to neither in weight or impressiveness, but superior to both in dignity and grace of delivery, was Mr. Tyabji's Presidential Address. The present writer still cherishes as one of his most precious intellectual possessions the memory of the scene where as a mere stripling, he stood behind a vast crowd, drinking in with rapture every word as it reached him, clear and apt, none so apt, he thought, and catching now and then a glimpse of the handsome countenance which beamed with earnestness, good humour, and perfect self-possession. He began by saying that he had accepted the office of President in spite of ill health, not so much because it was the highest honour that the people could confer on an Indian, as because he was anxious to demonstrate in his capacity as a representative of the Anjuman-i-Islam, of Bombay, that there was nothing in the aims and methods of the Indian National Congress which could justify his co-religionists in keeping aloof from it. He then went on to impress on his audience the need for moderation, caution, and forbearance,--a need always present, but at that time of the infancy of the Congress most imperative. "Be moderate in your demands," he said, "just in your criticism, correct in your facts, and logical in your conclusions, and I feel assured that any proposals we may make will be received with that benign consideration which is characteristic of a strong and enlightened Government."

HIGH COURT JUDGE

In 1895, he accepted a place on the High Court Bench—a promotion which, on a former occasion, ill-health had compelled him to decline. As a Judge he maintained his reputation for strength, judicial temper, and unfailing courtesy to the Bar. He cared more for equity and substantial justice than for legal abstractions so dear to the heart of those lawyers who are ambitious to be known as jurists. Once, indeed, he is said to have declared. "These law reports are becoming a cumbrous affair, and I sometimes wish we could manage to get on without them."

As Judge, the most remarkable features of his career were undoubtedly his fearless and absolutely independent character uninfluenced by any considerations of race or faith or self-interest, and the public felt before him as they perhaps felt before no other Judge that whether he was pitted against the Government or a great and powerful European Corporation or an ordinary litigant, justice would be given to him indifferent of all considerations.

His behaviour, bearing and attitude was throughout most dignified and inspired respect.

His judgments were seldom if ever written out, and he generally delivered his most elaborate and lengthy judgments from a few notes. And perhaps the solemn, clear and decisive manner of his pronouncements, in a beautiful voice, were another feature of his tenure of the judicial office.

In his youth he had gone through a vast number of volumes of the Law Reports, and once well furnished with and grounded in the principles of the Law, in his later life he threw off his dependence on the law reports and chiefly trusted to the principles he had grasped.

Some nine months after his death was delivered in the famous case of Kessowji Issur against the Great Indian Peninsula Railway Co. (1907) what is a most remarkable judgment of the Privy Council held up the judgment of Mr. Justice Tyabji to admiration with repeated compliments, even going to the length of setting it up as an example to the learned Judges who had sat in appeal over him and reversed his judgment.

No judge could wish for a higher compliment from the Privy Council, but he did not live to see it.

WOMEN'S EDUCATION AND FREEDOM

Perhaps, Mr. Tyabji's most solid work was done in connection with the Anjuman-i-Islam, of which he was at first Secretary and for some years before his death President. He held advanced views in regard to the condition of the women of his community and strove hard to weaken the power of the zenana system. Unlike many reformers who show their vehemence only in the denunciation of others, Mr. Tyabji, cautious as he was by nature, acted on his conviction in his own family circle. His daughters came out of the purdah and received their education in England. Indeed, the Muhainmadans of Bombay owe much of their present prestige and enlightenment as a community to his watchful and unremitting labours on their behalf.

Mr. Tyabji contributed largely to the development of social life in Bombay and both Mr. and Mrs. Tyabji were distinct social centres round which began aided by Lady Reay, Lady Scott (wife of Sir John Scott) and Mrs. Peachy Phipson, that social intercourse in private houses, between the different communities, which has since their time developed the clubs and gymkhana of Bombay. Mr. Tyabji was one of the founders and from the commence-

ment the President of the Islam Club and the Islam Gymkhana which both he attended almost daily.

Although himself not an athlete nor a sporting man he gave a most constant encouragement to all outdoor games, badminton, tennis, cricket, riding and generally presided at the races and sports in Matheron.

He was himself a fine card and chess player but discouraged these in preference to the outdoor games among the young men, holding that fresh air and exercise as much more necessary.

He set an example by introducing badminton and tennis in his family in 1887 when these games were hardly known in Bombay, by having courts in his own garden when he daily played a couple of games from that year every morning before breakfast, almost without exception, prevented only occasionally by reason of health, and his constancy of habits is exhibited by another practice of his—walking from court with his carriage behind him throughout the year, in winter, summer, spring, and even actual rain did not prevent him, unless it was excessive.

On account of a defect in his eyes he often saw a double ball, one on the top and another at the bottom, and he constantly hit the wrong one but this did not discourage him in his games.

On account of his eyes he was for many years unable to write or read much, and had to be read to and write by dictation. He had a peculiar characteristic in dictation. He dictated without ever changing or altering or stopping, but stopped to ascertain that the spelling was correct. At the end of the dictation he invariably had it read out, but those who wrote for him never knew of any occasion when he made any alteration in his own word or phrase.

PRESIDENT OF THE M. A. O. E. CONFERENCE

When he presided in 1903 over the Muhammadan Educational Conference held at Bombay, he made a powerful plea for the abandonment of the purdah system, and for a liberal education for the women of his community. But the part of his address that will be most remembered by his countrymen is the one in which he declared his adhesion to the principles of the Indian National Congress, —a declaration which derives additional force from the circumstance that among his hearers on the occasion was the Governor of Bombay.

Gentlemen, you are no doubt aware that, although the Conference has been in existence for several years past, I have not hitherto been able to take an active part in its deliberations. No doubt, there have been many reasons for this, to which it is unnecessary to refer. But there is one in regard to which I must say a few words. You are no doubt aware that I have always been a supporter of the Indian National Congress. In my younger and freer days, when I was not trammelled with the responsibilities imposed by my present office, and when I was, therefore, able to take a more active part in public life, and especially in the politics of the Empire, I deemed it my duty to support the Congress, and, as you may perhaps know, I had the honour of presiding at the Congress held in Madras some years ago. On that occasion I described my election as the highest honour that could be paid to any Indian gentleman by his fellow-subjects of the Empire. Being of that opinion at that time and being still of that opinion now, you will readily understand that it was not possible for me to take any part in connection with any institution which had or could be supposed to have the slightest trace of being hostile or antagonistic to the Congress.

This must have been hard food to swallow for those among the audience who were endeavouring to represent the Muhammadan deputation to the Viceroy as being anti-Congress and anti-Hindu, and *on that account* entitled to the sympathy and countenance of Government.

LAST DAYS IN ENGLAND

Early in 1906 he went to England for a cure of his eyesight which had begun to give serious trouble. He

progressed remarkably well and felt strong enough to make long motor tours. He was even present at two great meetings and spoke with high usual candour and vigour. His theme at a meeting of the East India Association in March was moderation and courtesy in politics and progress and enlightenment at home.

Although I have oftentimes in former days criticised the acts of Government, I would ask my young friends to remember whether they have not very much to be grateful for, although they have no doubt also many causes to complain; but, in looking at the acts of Government, it does not do either for young India, or, for the matter of that, middle aged India, or old India, always to fix its eyes upon the faults of the Government, and entirely to forget these blessings which we enjoy under the aegis of the British Government.

Now, as regards the attitude of Government towards the Congress. Although we have been reminded that this is an occasion on which political views may be discussed, it must be borne in mind that in the position which I occupy at present, I am not at liberty to discuss any political questions of a controversial character, but I believe that Government perfectly understand and recognise that the Congress is not a seditious body. I believe they recognise that the Congress does consist of a large body of people speaking with authority upon the question, and although they do not like their acts to be criticised openly in the way that sometimes they have been, I believe that the resolutions of the Congress are really considered by Government in a sympathetic spirit; and as far as they think any effect can be given to them, I believe that they are desirous of giving effect to them and to the desires of the nation as expressed through the Congress. But after all--speaking for my own countrymen--I think we have to address ourselves more to the question of education and to the question of social reform. I am afraid that young India has fixed its attention too exclusively upon politics, and too little upon education and upon social reform. I am one of those who think that our improvement and progress lies not in our efforts simply in one direction, but in various directions, and that we ought to move side by side for the purpose of improving our social status and our educational status quite as much as our political status. It is no use labouring together for a representative Government of a very advanced type if the majority of our own countrymen are still steeped in ignorance.

As regards the employment of the people in Government service, I think it a perfectly legitimate aspiration on the part of the natives of India to be employed in larger and larger numbers in the higher degrees of the public service. Natives of India

possess very high natural qualifications for employment in many branches—such as the judicial, the public works, the railways, the telegraphs—and I, for one, am unable to see why much larger numbers of the natives of the country should not be employed in these departments not only without prejudice, but with great advantage to the Empire.

ALIGARH UNIVERSITY

In July he attended a dinner of the Aligarh College Association, and expressed his deep sympathy with the movement. He was in favour of Aligarh becoming a university, and he appealed to his brethren for active help.

It has been well remarked by Sir Thomas that one college, however good and important, cannot possibly be sufficient for the requirements of fifty or sixty million Mahomedans in India. We must have these institutions all over India, and it has always seemed to me of the greatest possible importance that the educational institutions we have in other parts of the country—some of them fulfilling the humbler mission of imparting primary education, and others teaching up to the high school standard, should be raised to or supplemented by collegiate institutions. The well-wishers of our community present to-night as guests will be pleased to hear that efforts in this direction are being made (and not without success) in other parts of India. If, as I hope, Aligarh develops into a university, it will become the centre of attraction educationally for all Mahomedans, not only from the various Mahomedan schools and colleges of India, but also, it may be, from other parts of the Mahomedan world. And it certainly is a very pleasant symptom that we have so recently seen, in connexion with the Royal visit, such large contributions made for the endowment of chairs at Aligarh, the donations including a lakh of rupees from a private Mahomedan gentleman in Bombay, and a large contribution from that very enlightened, most intellectual, and public-spirited nobleman, the Aga Khan, who, I may point out, is much more directly connected with Bombay than with Upper India. Having received so much help from Western India, our brethren in the North may permit me the friendly criticism that they seem to have greatly neglected the cause of female education. This is a reproach to men of their enlightenment, and I have noticed with the greatest pleasure that recently efforts have been made to remedy that state of things. This is a reform in respect to which my Mussalman friends in the North may not despise to take a leaf out of the book of their Bombay co-religionists. I need only add a hope the college will develop into a real centre of Moslem education and enlightenment not merely for the North-West, but for all India. There is not a Mussalman in India, certainly not in Bombay, who does not wish all prosperity and success to Aligarh.

THE END

These were fated to be his last public utterances. To all appearance, he was in excellent health and being amongst his own children, he enjoyed a degree of peaceful and contented joy that, perhaps, only an Indian parent can appreciate. But unsuspected, save by a doctor who kept his own counsel, an insidious affection of the heart was sapping his vitality and carried him away on the 19th August 1906 without pain. "There was about him," said the late Ananda Charlu, "that heartiness and that manliness, which at once challenged my unstinted admiration for him. * * * He threw himself heart and soul into the work. * * * Thus to the last day of his earthly sojourn his was a career of sturdy honesty, of unflinching manliness, and of a patriotism, which no narrow, pietistic, sectarian considerations ever put any check on." Among public men, he will be long remembered not merely for his sagacity and eloquence, but for his absolute fearlessness and fidelity to the popular cause.

SOCIAL LIFE IN BOMBAY

He was a man of remarkably handsome features and of a strikingly dignified, though severe and awe-inspiring bearing. His influence wherever he moved was almost decisive, and his opinion and will rarely failed to prevail.

In his presidential speech at the Mahomedan Educational Conference he expressed the opinion that the restrictions of the purdah were carried beyond the commandments of the Koran, and ought to be brought within them. This opinion was so hurtful to a large number of the audience that it was feared they might resort to violence,

and there was a conspiracy to challenge his view on the next day of the Conference. On this day as he entered a man of stentorian voice rose amidst a band of bigots and challenged the interpretation of the Koran citing a passage.

Mr. Tyabji said : " Write down the passage and hand it over!" The man wrote and sent it over.

Mr. Tyabji then closely read it to himself and said : " This has nothing to do with the question." The man began to argue and Mr. Tyabji with a powerful voice cried out, " Sit down Sir, sit you down." So full of authority and power and with such force was it said that the man dropped to the ground and with it the conspiracy. It is narrated that a certain number of notables tired and jealous of the respect which he monopolised and the attention concentrated upon him, decided that they would not move or rise when he entered. But when he did they all rose up and each asked why the other did and the reply was : " What could I do, I tried my best but when he came I could not resist it." So it was when he as a young man visited the Anjuman School of which he was Secretary and the boys of the School would say that they had often risen up like drilled soldiers the moment he entered and had stood an hour without changing foot in his presence.

And perhaps it was this that made Lord Reay say : " If there is one man I admire in India it is Bed-re-ed-din," as he used to call him ; and His Highness the Aga Khan on the death of Sir Pherozesha Mehta thus spoke of him (Monday 6th December 1915) : " Nothing finer or better could be imagined for a young Indian patriot than to take to heart and carefully study the life-long principles and practice of three of India's greatest and soundest sons, each an example and inspiration to all his countrymen, and to

his own community as well—Mehta, Gokhale and Badruddin Tyabji."

To this we may add the testimony of one who was on intimate terms with Tyabji and his family; * and indeed we cannot do better than conclude in the words of Sir Dinshaw Wacha who, at the memorial meeting held at Bombay soon after Badruddin's death, bore eloquent testimony to his high character and achievements. Mr. Badruddin, said Mr. (as Sir Dinshaw then was) Wacha, appeared to have been born a statesman.

The more I knew him and the more I heard from his lips, many an observation on the condition of the country, its administration, and the right and proper duty of ourselves as citizens, the deeper that conviction grew on me. Had his *kismet* been cast elsewhere, say, in a great Native State, Hindu or Mahomedan, I am perfectly certain that Mr. Tyabji would have risen to fill the highest post. He would have been another Sir Salar Jung. There were in him all the great qualities which contribute towards the making of an eminent statesman—talents of a high order, political sagacity, tact, judgment, suavity of manners, and, above all, catholic sympathy. As a Moslem, he was devotedly attached to his creed, and thoroughly understood its ethics with a broad-mindedness and tolerance which deserve the highest praise. Moreover, his early training and education in England had had its great formative influence on his character which was all through discerned in his public life. As a westernised Mahomedan, he could not sit inactive without reforming his community. He rightly conceived that the first and most important element of social reform among his co-religionists was education. The backwardness of Mahomedans in this respect he seems to have perceived from an early day; and he perseveringly endeavoured, and endeavoured with success, to lay the foundation of educational progress in his community. He chalked out the broad lines on which it should proceed. He knew well that reform meant reform first within his own domestic

* "His father and my father were next door neighbours, residing in Old Mody Street in the Fort. Both were merchants and both had great regard for each other, as my father more than once used to tell me and recount some interesting reminiscences of the past. It was a curious coincidence that the sons became equally known to each other. More. My children in turn were friends of the late Mr. and Mrs. Tyabji and their children. And I for one am glad that this hereditary friendship with the members of the Tyabji family is continued from sire to son, so to say."—D. E. WACHA.

circle; and *pari passu* reform for the community by slow and easy gradients; in other words, on the lines of least resistance. Thus it was that he first lighted the torch of social reform in his own family and later on held it aloft, illuminating the way for those who had his force of character and resolution to associate with him in that noble and most beneficent work. * * *

In the entire community of Mahomedans in India, he was recognised as a towering personality and a power and influence for good. But more than a Mahomedan, he was proud to call himself an Indian. His heart beat in unison with the aims and aspirations of our national organisation, while his head had clear conceptions of the ultimate triumph of those objects. In his death, therefore, India loses one of her best sons, a pillar of progress, justice, freedom, toleration and catholic sympathy. It is to be feared it would be long before the country discovers another Tyohji.





SIR GOOROODASS BANERJI

SIR GOOROODASS BANERJEE

A GREAT CHARACTER

WHEN I first arrived in Calcutta, I was informed that there was on the Bench of the High Court an Indian Judge who to personal high character and the intellectual aptitudes of his race added a profound acquaintance with the principles of Western Jurisprudence and in whose mind and speech might be observed a quite remarkable blend of the best that Asia can give or Europe teach.

In these words, Lord Curzon was referring to Sir Gooroodass Banerjee, the story of whose life was "the story of the life of an honest, upright and brilliant career unblemished by a single dark spot either in public or in private life, and of success resulting from the constant domination of higher over lower springs of action". Sir Gooroodass was a self-made man—"a type which the modern man always admires. Such admiration changes into reverence when one finds that in the storm and stress of modern life there are men who can in their action harmonise the two distinct and often opposed interests of self-advancement and the advancement of the community to which they belong". Speaking in the University of Calcutta on the occasion of his death, Sir Asutosh Mukerjee said :

The character of his work which impressed me most was his rectitude of purpose, his unflinching adherence to what appeared to be in his judgment the best in the interests of the University, and no detractor, if indeed he had one, will ever venture to suggest that in what he did he was animated by any feelings other than the best interests of this University. Of him we may say without fear of challenge, that in him India has lost one of the greatest of her sons, one who devoted all his best energies during his career of unexampled brilliance for the benefit of his fellowmen. His life was truly unselfish and will be an example to generations to come.

Lord Chelmsford, who was the Chancellor of the Calcutta University when Sir Gooroodass passed away on the second of December 1918, after referring to the loss to the University occasioned by his death stated: "He was a living refutation of the view that Western lore is incompatible with Eastern simplicity and manners." And he added that "Sir Gooroodass had drunk deeply at the wells of Western thought and Science, yet, he held firmly to all that is best in the civilisation wherein he was born. He has left an example to us all—modest, untiring, cheerful and large-hearted to the end." And Sir Lancelot Sanderson, who was the Vice-Chancellor and then Chief Justice of the High Court, Calcutta, said on the same occasion: "He was a great scholar and a man who devoted his whole life, whether as a Judge of the High Court or in other capacities, in public service, and he will always be remembered as one of the foremost men of his time. But by those who knew him personally, his memory will be treasured mainly on account of his engaging personality, his simplicity and sincerity, his unfailing courtesy and kindness of heart. Truly he was a great man."

BIRTH AND EARLY YEARS

Sir Gooroodass was born at Narikel Danga on the 26th January 1844. He came from a Brahmin family, highly respectable and cultured but of limited means. His grandfather, Babu Manik Chandra Banerjee, had come to Calcutta in search of service and secured an appointment in a merchant's office. The ancestral dwelling house at Narikel Danga wherein Sir Gooroodass was born and which he afterwards enlarged and embellished was built by Babu Manick Chandra. Gooroodass's father, Babu Ramachandra was a clerk in the office of Karr and Tagore till his early death in 1847, when Gooroodass was barely

three years old. The care of Sir Gooroodass consequently rested solely on his mother who was an ideal Hindu woman of the old school, simple, austere, unostentatious and possessing such strength of character and determination as not to give way to the severe calamity that befell her. Sir Gooroodass owed not a little of his greatness to his good mother, who wisely decided to give him an English education and at the same time by her watchful care brought him up in the orthodox traditions of Hinduism. The mother lived to see her son a High Court Judge: and letters written by Prinsep, J., and Petheram, J., to Sir Gooroodass on the occasion of his mother's death reveal to us the great regard, respect and love that Sir Gooroodass bore for her. Prinsep, J., wrote: "I felt very much for you on hearing of your great sorrow, for, it was only the other day that you were telling me how much you owed to your mother and I know from the old Berhampore days what deep affection you felt and what a devoted son you have been."

Sir Gooroodass received his first lessons in a Pathasala close by his house. From the Pathasala he passed on to the General Assembly Institution. But his real education began when he was admitted into the 8th class of the Hare School, then known as the Coloo Tola Branch School. Here he read for five years covering eight classes in that time by double and triple promotions and passed the University entrance examination in 1859 standing first from his school. Sir Gooroodass then joined the Presidency College. As in the school, so in the College, Sir Gooroodass was a very intelligent and hard-working student and secured for himself the first place not only in his class but also in all the University examinations. He passed his F. A. examination in 1862 standing

first in order of merit; his B. A. examination in 1864 occupying the first place of honour. He appeared in the M. A. examination one year after his graduation and secured the University Gold Medal awarded to the first place in Mathematics. After obtaining his M. A. degree in 1865, he passed the B. L. examination in 1866, again standing first in order of merit. In the interval between his M. A. and B. L. examinations he acted as Assistant Lecturer in Mathematics at the Presidency College.

In Sir Gooroodass was found a rare combination of memory and intelligence. He could cite off-hand and faultlessly, English, Bengali and Sanskrit passages, prose and poetry, from books which he had read in his school and college days. At one of the annual re-unions, held before his death, of the old and new boys of the Scottish Church's College where Sir Gooroodass received his first education, Sir Gooroodas, we are told, gave a recitation of the good old poem "The spider and the fly" which he read while he was in that school. Sir Gooroodass received his early Sanskrit education under a learned pandit at home and while yet a boy he made good use of his memory by committing to heart the whole of the Amarakosha. His father Babu Ramachandra, we are told, could lay claim to Sanskrit culture and had a great regard for the Bhagavat Gita. It is related that during Gooroodass's childhood his father would often take him on his lap and recite the sacred verses of the Gita, and it was not long before the little child learnt to lisp the sacred numbers. Sir Andrew Fraser speaking on the occasion of handing over the Letters Patent of Knighthood to Sir Gooroodass, referring to this incident, said :

The picture of a pious old father teaching his infant son to chant the sacred verses of the Gita is very attractive. That father died when the boy was only three years old, but the training of the

boy was undertaken by a worthy mother. She lived to see her son rise to the Bench and occupying the highest place in the esteem and affection of his fellow-citizens of Calcutta and of the many far beyond the confines of this City.

His mother not only kept before her son high ideals of virtue and piety but her daily actions were living examples of a pure, pious and disinterested life. Sir Gooroodass never forgot the debt he owed to his mother's loving care and guidance. It was a great joy to him to adore her as his household Goddess; her death, though in advanced years, gave such a shock to him that it brought on him physical prostration from which it took him long to recover.

AS A LAWYER

Sir Gooroodass was enrolled as a Vakil of the Calcutta High Court in the year in which he passed his B.L. examination; but he did not remain in Calcutta long. Soon after, he was appointed as a Law Lecturer in the Berhampore College with liberty to practise and went to Berhampore and joined the local Bar. At the College, he had to teach Law daily for an hour and also Mathematics for a similar period three days in a week.

The first fee that Sir Gooroodass received as a Lawyer was through the patronage of Babu Matilal Banerjee, the first man in the profession at Berhampore at that time; Sir Gooroodass has told us of the way in which he obtained the brief. The case related to succession in a rich Mohammedian family and Sir Gooroodass while reading his brief with Babu Matilal brought out a point of law which had a most important bearing on the issue in the case. Babu Matilal was so much struck with the discovery that he at once gave up his right as a senior man and allowed Gooroodass, with the permission of the Court, to argue the case on the ground that the point was his discovery and that the senior man ought not to take credit for it.

From the very beginning of his career as a lawyer Sir Gooroodass was most punctilious in observing the rules of conduct of the profession. The incident mentioned in his address on "The Moral Aspects of the Legal Profession" (which he delivered later on in Calcutta) illustrates how he discouraged vexatious cases. What is recorded in Babu Chuni Lal Bose's biography is also worth noting. Sir Gooroodas had accepted the brief in a certain case and the fee marked was Rs. 50. On the day immediately preceding that of the hearing of the case he was offered a fee of Rupees one thousand five hundred for going to Berhampore from Calcutta where he was then practising. It was late in the evening when the offer came, the first client would not agree to Sir Gooroodass's handing over the brief to another practitioner and there was no time to apply for an adjournment of the case. Under the circumstances, Sir Gooroodass told the Berhampore clients that he could not accept their offer.

Although fortune favoured Sir Gooroodass in every way when he was at Berhampore, his mother was anxious that he should come back to the family house at Calcutta. She reminded him of his promise to leave Berhampore and come back to Calcutta as soon as he could command a small but fixed monthly income for the support of the family. Sir Gooroodass could not put off his mother's command, and he left Berhampore in 1872 for Calcutta. His reputation as a sound conscientious and able lawyer preceded him, and the experience acquired at Berhampore made his early struggle at the High Court much easier; and not long afterwards, he was established in the front rank of the Calcutta Bar. In 1876, he passed the Honours examination in Law and wrote a thesis on "The Necessity of the Religious Ceremonies in Adoption" and another

on "The Hindu Law of Endowments". These obtained for him a Doctorate in Law in 1877 and he was appointed Tagore Law Lecturer in 1878 to deliver lectures on "The Hindu Law of Marriage and Stridhanam"—lectures which still remain the standard authority on the subject. Dr. Gooroodass Banerjee became a Fellow of the University in 1879 and was elected and continued to be a member of the Syndicate for five years from 1885. In 1886, he became an Honorary Presidency Magistrate and in 1887, he was nominated as a Member of the Bengal Legislative Council.

JUDGE OF THE CALCUTTA HIGH COURT

When Mr. Justice Cunningham retired in 1888, Sir Gooroodass was appointed temporarily for six months as a puisne Judge of the Calcutta High Court, and was soon made permanent. "During his sixteen years' work on the Bench, he endeared himself to everybody by his unvarying kindness, consideration and unfailing courtesy and was held by all in high regard as a Judge owing to his strong sense of justice, his great learning and the conscientious discharge of his duties." Sir Francis Maclean, C. J., had such a high opinion of Sir Gooroodass that he never sat if he could without Sir Gooroodass during the whole period of his service. The Advocate-General, speaking on the eve of Sir Gooroodass's retirement on the 29th of January 1904, said :

I will only say so far as my experience goes which extends to the whole time of your Lordship's career as a Judge, never have I heard a single suitor complain that full justice had not been done to him by Mr. Justice Gooroodass Banerjee, that his case has not been listened to with attention, all the arguments weighed and every effort made to understand what it was, and he felt that if the case was decided against him, it was rightly decided. You have also shown a character of independence; you have spoken when silence might have pointed out a line of least resistance. You have been

throughout your career as a pleader and a Judge, if I may be permitted to say so, most eminently straightforward, honest and conscientious.

The *Calcutta Weekly Notes* remarked on the same occasion :

He has also during this period contributed considerably to the interpretation of law. His judgments are always thorough and learned, and though in some instances the conscientious labour and study that he devoted to them tended to make them a little too technical, yet their value as contributions to the legal literature is well recognised.

The Vakils of the High Court presented him with an address in a silver casket; in the course of the address they referred to his "career as a Judge as characterized throughout by profound learning, great ability, thorough conscientiousness, marked independence, untiring patience and uniform courtesy— qualities by which you have always inspired confidence in the public mind and commanded the respect and admiration of all branches of the profession".

Sir Gooroodass sat on the High Court Bench for sixteen years and the reports of those years abound in his judgments; not only in topics of Hindu law but also in the law of Procedure and in Criminal law, he has been responsible for several masterly judgments. These are reviewed at length in *8 Calcutta Weekly Notes* and in the *Allahabad Law Journal* on the occasion of his retirement. We shall here only notice a few of his notable judgments.

SOME FAMOUS DECISIONS

Sir Gooroodass took a leading part in several Full Bench decisions of the Calcutta High Court. In the Full Bench case of *Jogodanund Singh v. Amrita Lal Sircar* he delivered the judgment of the Full Court reconsidering the scope of section 174 of the Bengal Tenancy Act. Defining the limits of retrospective operation of statutes in that case, Sir Gooroodass pointed out:

The rule against retrospective operation is intended to apply not so much to a law creating a new right as to a law creating a new obligation or interfering with vested rights.....As the creation of a new right in one class of persons is generally attended with the imposition of new obligations on, or the interference with vested rights of, other classes, a law creating a new right would, in general, be subject to the rule against retrospective operation. But whereas in this case, the new right (conceding for the moment that it is a new substantive right) is created expressly under conditions which prevent its imposing any new obligations on, or its interfering with any vested right in, others, the reason for the rule ceases to exist, and the rule must therefore cease to be operating....Then in the second place, I do not think that section 174 creates any new right in the judgment-debtor. It embodies in substance a rule of procedure...It being thus really a matter of procedure, there can be no objection to its having effect immediately even though it should affect past transactions and the mode of enforcement of vested rights, "provided of course", as Mellish, L.J., said in the case of the *Republic of Costa Rica v. Erlanga*, "that no injustice is done".

In another Full Bench decision I.L.R. 24 Calcutta 62, Sir Gooroodass considered the question whether the word 'representative' in section 244 of the old Code of Civil Procedure included, in the case of a judgment-debtor, the purchaser of his interest in a court sale. The point was by no means clear and Dr. Rash Behari Ghose appearing for the appellant canvassed the position which was upheld by the Full Bench that a purchaser in a court sale is a representative. In the Full Bench case of *Hemadri Nath Khan v. Ramani Kanta Roy*, it was Sir Gooroodass again who delivered the leading judgment discussing the scope of the right of a joint owner to partition, from which judgment the following passage is extracted :

As a general rule, every joint owner of property should be held entitled to obtain partition or in other words, "to be placed in a position to enjoy his own right separately and without interruption or interference by his co-sharer". It is against good sense, if not also against good morals, as the Roman law viewed it, to compel joint owners to hold a thing in common, "since it could not fail to occasion strife and disagreement among them". But if partition has the advantage of placing each co-sharer in a position to enjoy his own property without interference by others,

it has the disadvantage of subjecting him to expense, and of impairing more or less the value of the joint property by dividing it into comparatively small parts; and where partition is sought by a co-owner whose interest in the property is limited in point of time, the question may arise, whether the temporary advantage to be secured to him is sufficient to outweigh the disadvantage of subjecting the other co-owners to expense and trouble which may in the end lead to no permanent division, the successors of the applicant not being bound by anything done at his instance. The general rule must therefore be taken subject to many exceptions and qualifications, depending upon the nature of the thing owned jointly, the nature of the interest of the party claiming partition, the nature of the terms and conditions on which the different joint owners hold their respective interests and various other matters.

Sir Gooroodass was also responsible for limiting the scope of the Privy Council decision in *Macnaghten v. Mahabir Pershad Singh*, by pointing out that although the language of that judgment was wide, the Privy Council did not intend to lay down a rule applicable to all cases. The question was whether an irregularity in the conduct of a court sale caused the sale to be set aside if the price was inadequate. Bauerjee, J., observed :

The relation of cause and effect between a proved material irregularity and inadequacy of price may either be established by direct evidence or be inferred, where such inference is reasonable from the nature of the irregularity and the extent of the inadequacy of price.

In fact his judgment was a justifiable modification of the rule laid down by the Privy Council in the light of the well-known legal maxim *Res Ipsa Loquitur*.

In *Queen Empress v. Kadir* (23 Calcutta 604) he discussed the law relating to insanity as affecting criminal responsibility. The accused in that case was suffering from mental derangement and he murdered a boy without any apparent motive. The evidence showed that the accused was fond of the boy and had no quarrel with the boy's family either. But the accused observed secrecy in committing the murder, tried to conceal the corpse and hid himself in a

jungle. Banerjee held that the exception of section 84, Indian Penal Code was not available in such a case.

It may be that our law like the law of England limits non-liability only to those cases in which insanity affects the cognitive faculties; because it is thought that those are the cases, to which the exemption rightly applies and the cases in which insanity affects only the emotions and the will, subjecting the offender to impulses whilst it leaves the cognitive faculties unimpaired have been left outside the exception, because it has been thought that the object of the criminal law is to make people control their insane as well as their sane impulses or to use the words of Lord Justice Bramwell in *Reg. v. Humphreys* "to guard against mischievous propensities and homicidal impulses. Whether this is the proper view to take of the matter or whether the exemption might be extended as well to cases in which insanity affects the emotions, and will, as to those, in which it affects the cognitive faculties is a question which it is not for us here to consider. There are, no doubt, eminent authorities who are in favour of extending the exemption to those cases, but our duty is to administer the law as we find it. It might be said of our law as it has been said of the law of England by Sir J. Stephen that even as it stands, the law extends the exemption as well to cases where insanity affects the offender's will and emotions as to those whom it affects his cognitive faculties because where the will and emotions are affected by the offender being subject to insane impulses, it is difficult to say that his cognitive faculties are not affected. In extreme cases, that may be true: but we are not prepared to accept the view as generally correct, that a person is entitled to exemption from criminal liability under our law in cases in which it is only shown that he is subject to insane impulses notwithstanding that it may appear that his cognitive faculties, so far as we can judge from his appearance and works, are left unimpaired. To take such a view as this would be to go against the plain language of section 84 of the Indian Penal Code and the received interpretation of that section.

An important decision of his on the Hindu law of Adoption is reported in *Mondakini Dasi v. Adinath Itey*; Banerjee J., upheld the view that a minor widow who had arrived at the age of discretion can adopt, especially if the boy to be adopted is named in the power given to her. In the above case it was the minor junior widow who adopted a boy named in the power of her husband and the question was whether such adoption, even if valid, would divest the senior widow of the estate of the deceased

vested in her. And Sir Gooroodass decided that the case was an exception to the general rule that an estate once vested cannot be divested.

Indeed there would be great injustice if the opposite view were to prevail and if the lawfully adopted son of the last full owner who is to bear all the obligations of a son were to be deprived of any part of his adoptive father's estate. The case is wholly different where an adopted son claims not the estate of his adoptive father, but that of another person after it has vested in some other heir who was entitled to it before the adoption. It would obviously lead to inconveniences and injustice to allow vested interests to be divested in such cases..... The contention of the appellant (the senior widow) is therefore wholly opposed to the authority of decided cases. It is equally repugnant to the spirit of Hindu Law. It was not denied that if the appellant had joined in the act of adoption, it would have been operative in divesting her estate. Now where a man authorises an adoption by any of his widows, it is clearly the religious duty of all his widows to co-operate in bringing it about; and it would be contrary to reason and justice to allow any one of them to gain an advantage by opposing or withholding her consent from that which it is her duty to accomplish.

Another noteworthy decision of Sir Gooroodass on Hindu Law is the case of *Jayannath Prasad Gupta v. Ranjit Singh* (25 Calcutta 351). Sitting with the Chief Justice, he overruled the contention of Babu Golap Chunder Sarkar that a clear text of the Mithakshara could, in the Benares school of law, be modified by or affected by the text of any other sage. He said :

There is neither reason nor authority for saying, that where the Mithakshara is, as it is here, clear on the point, the text of any sage, which is in conflict with the rule therein laid down, can be referred to for the purpose of creating a doubt, as the learned vakil for the appellant contends. To allow such a course would be to upset altogether the Hindu law of the Benares school, and indeed of every other school. The Mithakshara is the guiding authority of the Benares school and we cannot, in administering the law of that school, question the correctness of that authority because of its conflict with the text of some ancient sage.

RETIREMENT AND HONOURS

It was but fitting that knighthood should be conferred on him immediately after his retirement. On that occasion the *Calcutta Weekly Notes* said :—

During his long public life he played many parts and played them well, doing credit to the best traditions of the old Oriental race to which he belongs and the new Occidental civilisation. The order of knighthood is honoured by the membership of such men as he.

Sir Gooroodass was permeated by a high sense of duty which showed itself in all the great and small affairs of his life and came out most conspicuously in his work as a Judge. He was hardly, if ever, absent from the Court, during the sixteen years of his work on the Bench; his idea was that his absence even for a day would cause much inconvenience to the parties and their pleaders besides loss to the Government. When his son Jatindra Chandra who died at an early age of 15 was in a precarious condition in the morning, Sir Gooroodass attended the High Court at the usual hour and went on with his work with no outward show of anxiety or disturbance, and it was only later in the day when the Chief Justice came to know of the serious illness of Jatindra and interviewed Sir Gooroodass and made him dismiss his Court, that the loving father hurried to the death-bed of his son. Sir Gooroodass's reply to the Addresses of the Bar on the occasion of his retirement reveals his innate modesty and magnanimity. He disclaimed all personal credit for the success that attended his work as a Judge. "I must also freely own," he said,

that out of what may apparently stand to my credit for any good work done, a very large share belongs to you for the help you have always rendered me in doing that work. I must not here forget what the Gita in a somewhat different connection reminds us of, when it says, "deluded by self-conceit we often consider ourselves the authors of work which is really done by the agencies of nature". I say this, not from any affectation of humility but from a conviction of its truth, for though intolerance of inopportune contradiction or impatience of unnecessary delay may sometimes make us look with disfavour upon forensic arguments, it is beyond question that the help which the Bar renders to the Bench is simply invaluable.

ADDRESS ON LAW AND MORALS

Sir Gooroodass's high opinion of the profession of law is found best expressed in the admirable address delivered at the Calcutta University Institute on "The Moral Aspects of the Legal Profession". On the need for incessant study on the part of a lawyer, he said :

If you want to do your duty as a lawyer well and properly, you must begin by doing your duty as a student well and thoroughly. And here it is necessary that you should have a correct idea of the nature of the functions of lawyer, to be able to realise the full importance of the careful and patient study that I insist upon. Now, touching the nature of the lawyer's work there has been some difference of opinion. Some well-meaning, but I fear, ill-informed persons have said that the lawyer's business is only to quibble about words and mystify and complicate the simple principles of justice by the application of cumbrous and artificial rules; and a poet has feelingly exclaimed :

" The toils of law that dark insidious men
Have cumbrous add'd to perplex the truth
And lengthen simple justice into trade."

In construing statutes and other documents, a lawyer no doubt has to enter into verbal discussions, but to ascertain the true meaning and intention of the legislature or of a testator notwithstanding the imperfections of language, is not less interesting than the problem of deciphering inscriptions of antiquarian value, while it is certainly of much greater practical importance to mankind. And as for the charge of complicating things that are simple, as well may you accuse the mathematician of perversely creating the stiff and repulsive science of mathematics upon a few simple axioms. The truth is that, law, like other sciences, is based upon a few fundamental principles, and these in their application lead to such complex propositions that they can be dealt with only by careful study. And the student of law who from the simplicity of the fundamental principles imagines that he will be able to deal with any case without much study, falls into as great an error as the student of mathematics would if he were to suppose that as the fundamental axioms of geometry are simple, he would be able to understand the properties of the higher plane curves and of the wave surface without any preparatory study.

Nor must you flatter yourselves with the idea that when these difficulties arise if ever, in any particular case, there will be time enough for study. The Great Disposer of all things and of all time has so disposed of your time and my time and the time of each one of us and assigned work for every moment of our time in such a complete and continuous series, that it is impossible to interpolate

any term in the series; and if you therefore neglect the work assigned in any interval of time, it will completely disturb the whole series and you will never be able to make up for lost time. Our sage law-giver Yajnavalkya has well said :

" Neglect not religious duty, business or pleasure in proper season."

And it is equally well said in another great book of wisdom, " To everything there is a season and a time to every purpose under heaven."

There are other considerations which point with equal force to the necessity of systematic study on the part of students of law. The business of the lawyer embraces the whole range of human affairs in their endless variety and manifold complications. If you have a case of enhancement of rent on the ground of increased productive power of the soil or of increase in the value of the produce, something of agriculture and economics will have to be considered in dealing with the case properly. If it is a case of infringement of patent right, some knowledge of manufactures and mechanism will be required for the same purpose. In dealing with cases relating to transactions of banking or mercantile bodies some knowledge of the ways of trade and commerce is necessary. Cases of boundary disputes and claims to alluvial formations which are very common in the delta of the Ganges can hardly be well conducted without some knowledge of surveying on the part of the practitioners engaged. In dealing with the evidence of experts, some knowledge of chemistry and anatomy in cases of murder, of literature and the fine arts in cases of infringement of copyright, and of the religious tenets of different sections of the people in certain cases of defamation, will be essential. The demand upon your time which such varied study must involve, can only be met by your beginning early to economise time by doing everything in its proper time and putting off nothing for the future.

He then points to the high place occupied by the lawyer in any well ordered society in these terms :

Law is the ultimate arbiter of all contests between man and man in civilised society. They who come to you come with a sense of real or supposed wrong, and ask your advice to have their wrongs righted; and it is for you to see that the best advice is given to vindicate what is right. Your business places you in charge of the life, property and reputation of your clients...Such are the noble functions of the legal profession, and such is the position of grave trust and responsibility in which every practising lawyer places himself; and it is your paramount duty to see that you do everything to qualify yourselves for such a position. For the day you make up your mind to enter the legal profession, you dedicate your time to the service of humanity, and you have

no right to waste any time which well spent may better qualify you for such service. The day of such resolution ought to be a solemn day in your life, as solemn as used to be the day of initiation of a Brahmin in the *Vedas*, when that ceremony was intelligently performed. *

You should not only study law but should also carefully study the lives of those great lawyers who have shed lustre on their profession. Their example should ever be before your eyes to encourage and enlighten you. Every student of law should read Campbell's *Lives of the Chancellors* and the *Lives* of the *Chief Justices of England*, and books like Ballantine's *Reminiscences* and Robinson's *Reminiscences*. They will give you some knowledge of the lofty traditions of Westminster Hall. Nor must you omit to study the lives and conduct of the eminent men who belonged to your branch of the profession. The learning, eloquence and integrity of Dwarka Nath Mitter, and the sound sense, zealous advocacy and spotless character of Mahesh Chunder Chowdhuri must produce in every generous heart a yearning after what is good and great in a lawyer.

The second matter to which I would draw your attention is that you should study law not from a narrow technical point of view, but in a broad liberal spirit and should always try to bring it into harmony with, and make it subservient to, the end of justice. In construing a statute or any other law always credit its author with a sense of justice, and try to put such a construction as makes it consonant to reason. If you find this possible, you may be almost certain that your construction is correct. If you cannot construe it in that way, hesitate to accept your construction, for you may well suspect that there is some error somewhere. It is by seeking to construe the law in this liberal way that some of the best decisions on Hindu law have been arrived at.

He suggested some practical ways by which one could push himself forward in the profession without breach of professional etiquette.

The traditions of the profession require that you shall not seek for business in any way, not even by lowering your own fees, though one might have thought that that was a matter that concerned you alone. You are to wait till business seeks you out, if you deserve that. Now so long as the number of practitioners in any court was not very large, this is possible. But in the present state of things when the profession is so largely overcrowded, this is impossible. Even if one had rare abilities, like those of Erskine, to establish his reputation by conducting a single case, how is he to get that one case? Some honest modes of seeking business must now be permitted; and one of the least objectionable modes of seeking business is to seek it in the hands of distinguished leaders of the profession. This will not wound

the pride of the most sensitive nature, and it is the mode least likely to be attended with any abuse of patronage. Again it is a most pleasing duty cast upon the leaders of the profession by their very position, to discriminate and patronise merit in the juniors, and it is only by their exercising this agreeable privilege that the continuity of efficiency in the profession can be well and effectually secured against the intrusion of mediocrity backed by extraneous advantages.

* * *

There are other honest and legitimate modes in which a young practitioner may seek business. He can write useful law books or edit important Acts with well-arranged notes; but he must be careful to aim at usefulness and not mere pedantry or show. He can attract notice by making useful suggestions to others arguing cases, but he must be extremely careful to do so modestly and not with officious obtrusiveness. He can take up the defence of undefended prisoners, but he must know the serious responsibility of the position, and he must be extremely careful to prepare himself well so that his client may not be worse off with his help than he would have been without it.

I must here guard you against an error which you may fall into. A beginner in the profession is often with the object of being tested or perhaps simply troubled, put legal questions by men who have not the remotest idea of retaining him in their cases. Those questions are sometimes difficult to answer, and most experienced lawyers will often have to think and refer to their books before giving an answer. Do not give any haphazard answer, yielding to a feeling of vanity that you may be considered incompetent if you cannot answer questions at once. You are not walking books of reference. According to one of the best definitions given of a lawyer, he is a man who knows not what the law is but where the law is to be found.

On the question of low fees about which there is considerable room for debate, he said :

Now there can be nothing wrong in a man's assigning his own value to his services, and if that value is lower than what is fixed by custom or convention, there is a gain to society, as legal aid becomes obtainable at a cheaper rate than heretofore. It is said that the lowering of fee would lower the prestige of the profession, would make the practitioner unable to do his duty thoroughly, and would foster litigation by lowering its cost. The first objection seems to be of no force. Money no doubt is the standard for the comparison of value generally; but the intellectual and moral worth of a man or of a body of men is a thing far too high, far too refined, to be measured by such a low and coarse standard. The dignity and prestige of the legal profession ought to be measured not by what it can take from society in the shape of fees but by what it can give to society in the shape of wholesome aid and advice in the settlement of contested claims.

The second objection is good only in the case of those who have already got fair business, and who by lowering their fee might get more business than they will be able to manage. But this cannot be true of juniors struggling to get business. And as for their objection, the fostering of unhealthy litigation depends not upon the cheapness of legal advice but upon its unwholesomeness.

But it should be distinctly borne in mind that the lowering of fee is allowable only if it tends to the benefit of the client exclusively, and does not go to benefit any intermediate person.

He was positive that there should be no restrictions on admission to the legal profession to avoid overcrowding.

The difficulties that exist in the way of junior practitioners getting business have led many persons to think that it is necessary to impose arbitrary restrictions upon admission to the profession such as by raising the admission fees and the like. I must say I am entirely opposed to such views. You may in this way keep back many men from the profession, but they may be some of your best men. Poverty is not necessarily a disqualification in a junior practitioner. On the contrary, from the poorer classes, have come some of the ornaments of the profession. You all know what Erskine said after his maiden speech which established his reputation, when asked how it was that he ventured to disregard the interruption of a Judge like Lord Mansfield. He said he thought his children were plucking his robe and that he heard them saying, "Now fathor is the time to get us bread". The only legitimate method of reducing competition and preventing unnecessary disappointment is to raise the standard of intellectual and moral qualifications for admission.

He then proceeded to discuss how far a lawyer can act the part of a mentor of morality.

Here an important question may be raised, whether it is any part of the lawyer's duty to advise his client upon points of morality, or whether his duty is strictly limited to giving him legal advice, and whether he is bound, if the client insists upon it, to take up his case even though it may not in his own judgment be a righteous one. The question does not admit of a simple categorical answer as various considerations may arise in different classes of cases. But it may be generally affirmed that on the one hand a legal practitioner is not a mere law-advising machine without any moral sense and is not bound to work mechanically to serve the purpose of every one who can pay for the work; and on the other hand he is not to be troubled with a sort of moral squeamishness which suspects wrong and dishonesty where none may exist, and which makes the pleader take upon himself the functions of the judge and condemn a party before trial.

Considering the importance of the question, I may crave your indulgence to examine it a little more narrowly. Now a case may be bad in law or upon the facts; and if the latter, its unrighteousness may be matter of certain knowledge or probable inference to the lawyer.

When a case is bad in law, that is, so clearly and completely bad that there is nothing to be said in its favour, a practitioner is bound not only to tell his client that it is so, but absolutely to decline to take it up, as his taking it up even after due intimation of its hopeless character may lead the client to entertain a false hope of success. When however a case though bad in law is yet of a doubtful nature, the practitioner after due intimation to his client, may, if he insists upon it, take up the case; by refusing to do so he would be encroaching upon the province of the judge and condemning his client before trial, and his refusal will be open to the objection so forcibly pointed out by Erskine in his celebrated speech in the defence of Thomas Paine. Again, if a case is bad on the facts to the practitioner's own knowledge, he would be clearly wrong in taking it up. But if its unrighteousness is only a matter of inference to him, he should solemnly, but in a kindly spirit, exhort his client to desist if the case is really as he thinks it to be; but if the client denies its unrighteous character and insists upon his accepting it, he may do so.

And here I would earnestly beg of you to remember a word of salutary caution. Let not the vigour and freshness of your youthful intellect and your unmoderated zeal for client encouraged by accounts of occasional success of eminent counsel in winning cases, though on the wrong side, from the fallibility of human judgment, lead you to entertain the hope that your forensic ability is enough to enable you to win a case irrespective of its real merits. The most acute ingenuity will be baffled in its attempt to reconcile the inconsistencies of falsehood. The blandishments of rhetoric will be unable to hide the deformity of untruth and the ugliness of iniquity. On the other hand, truth requires but slender aid to set off her charms. By all means have full legitimate confidence in your own powers, but have greater confidence in the power and strength of truth and in the ways of Providence; and remember that "there is a divinity that shapes our ends, rough-hew them how we will".

Again, the business of a court would almost come to a standstill if no confidence were to be reposed on the honesty and integrity of its advocates. On the other hand, though one's own judgment whether right or wrong must be one's ultimate guide in all matters so far as one is concerned, yet to exclude all doubtful argument or evidence when advocating the cause of another would be for the advocate to encroach upon the province of the judge and to compel the client against his will to accept his judgment, when he wants that of the constituted court of justice. Perhaps the most practical view of the matter is that taken by Johnson who says, 'a

lawyer is to do for his client all that his client might fairly do for himself if he could.'

A standard was set for the lawyer to conduct his cases in the following passage :

In the conduct of cases an advocate should be animated by a due sense of his duty and the grave responsibility of his position, and he should never be actuated by any indirect motives of pleasing a friend or offending an enemy or of making a display of his ability. They make the best show of themselves who least care for it, while they who are anxious to make a show, cut the most awkward figure.

In cross-examining witnesses, and in criticising evidence or the conduct of the adverse party, a lawyer should remember that the liberty of speech that is allowed to him is a sacred privilege which must never be abused. It is a privilege which is granted for the better protection of truth and innocence against falsehood and fraud, and it should never be turned into an instrument of oppression against the innocent.

A word of advice to the Bench is given which Sir Gooroodass himself followed when on the Bench :

If respect is due to the Bench, kindness and courtesy are due to the Bar and especially to the junior members whom inexperience places under a disadvantage, and who require to be encouraged more than others. And undue severity towards them would be felt not by them alone but also by their clients as it would obviously prevent their doing full justice to the case they are arguing.

His parting words of advice to the lawyer rings high and true :

Nor need you fear that if the lawyer acts the part of a moralist and gives his client not only legal but also moral advice, the prospects of the profession will be injured. However much we may, as we all should, devoutly wish that unhealthy litigation should be put down, our combined efforts in that direction would only be a drop in an ocean. We can never expect to be able completely to calm the troubled sea of human affairs. The vain bickerings and contentions of men will never cease, and there will always remain enough work for the legal profession ; and if the millennium indeed be so near, and if our efforts are so likely to be crowned with success, still where is the apprehension ? By the time the fierce animosities of the litigant are appeased, will not the ambition and avarice of the lawyer also be gone ? And you, my countrymen, who are born in that land where the immortal Buddha renounced the crown and kingdom to bring peace on earth, and where the sage Sankara devoted his glorious life and unrivalled

powers of intellect to the work of spiritualising humanity and subduing the selfish principles of our nature you should never hesitate to incur any amount of self-sacrifice in doing good.

Do your duty to the best of your ability, knowledge and judgment and then though you may not earn wealth and distinction, you shall have earned that self-satisfaction, that peace of mind, which is the crown of crowns, which no wealth can buy, no patronage can bestow, and which no calamity, not death itself can take away.

EDUCATIONAL ACTIVITIES

Sir Gooroodass from the very beginning took a keen interest in education. Immediately he left college after graduation, he worked for sometime as Lecturer in Mathematics. At Berhampore, he taught both Law and Mathematics for some years. For nearly 14 years he exercised considerable influence on the character, system and policy of the education as imparted to his countrymen through the agency of the Calcutta University and other educational organisations. His ideal of a teacher was the Guru of ancient India who, in his own person, combined the functions of the preceptor, the father and guardian of his pupil during the latter's stay in his house for study. Although he knew that these conditions were not attainable in the modern circumstances, he aimed at assimilating the work of the modern teacher as much as possible towards that ideal. In his book "A few thoughts on education" (published by Thacker, Spink & Co., Calcutta, 1904) he deals in detail with the problems of modern education, with special reference to the circumstances in India. The sum and substance of Sir Gooroodass' advice in this matter is that any one set of faculties must not be cultivated to the neglect and exclusion of others and that it should be the aim of true education to allow legitimate latitude for expansion and development to each and every faculty in accordance with its importance in the economy of life. In

a word, true education should create a well-balanced condition of the body, the mind and the spirit.

Sir Gooroodass was the author of a number of valuable books on law, education, mathematics and culture. His work "Jnan O Karina" in Bengali enunciates the noble principles laid down in the Gita and considers their practical application to the affairs of every day life. It sums up his own experience in life and lays down rules of conduct which he himself followed and which he believed would help others in minimising the sufferings and disappointments inseparable from life and would secure for every man a fair amount of peace and of happiness. His books on Arithmetic, Algebra and Geometry, both in English and Bengali, are text books on the subject. He was a member of the Indian Association for the cultivation of science from its very foundation and afterwards became one of its Vice-Presidents. He was on the Committees of the Hindu and Hare Schools for many years and many important reforms in both the schools in respect of teaching, discipline and sanitary matters were introduced on his recommendations. Sir Gooroodass was one of the founders of the Calcutta Institute and the paternal interest he took in its welfare was well-known. His work in the Calcutta Universities both in the Senate and in the Faculties of Art and Law for forty long years is writ large in the records of the University. Off and on, he served on the Syndicate; and in 1912, he was Dean of the Faculty of Law. He was the first Indian to be appointed as the Vice-Chancellor of the University and he held that high office for three years from 1890 to 1892. Sir Gooroodass' Vice-Chancellorship was marked by a momentous change in the constitution of the University. The election system was first introduced in the appointment of fellows. The Syndicate adopted

rule, ever since in practice in the University, that no one should be appointed to set questions in any subject which he taught whole or in part.

He served as a Member of the Indian Universities Commission in 1902; and in his note of dissent to the report he stated his own views on the several topics dealt with, which show that he was an original thinker building upon the sure foundations of experience and differing wherever necessary with the boldness of one who knew.

The following paragraph explains his courageous note of dissent to the Report of the Commission :

My learned colleagues have aimed exclusively at raising the standard of University education and college discipline, and some of the measures of reform they have advocated for the attainment of that exclusive object, naturally enough tend to place education under the control of Government and small bodies of experts, and to reduce the control of what is known as the popular element to repress imperfectly equipped colleges and schools, to deter students of average ability and humble means from the pursuit of knowledge, and in short, to sacrifice surface in order to secure height. While yielding to none in my appreciation of the necessity for raising the standard of education and discipline, I have ventured to think that the solution arrived at is only a partial solution of the problem and that we should aim not only at raising the height, but also at broadening the base, of our educational fabric. And where I have differed from my learned colleagues, I have done so mainly with a view to see that our educational system is so adjusted that, while the gifted few shall receive the highest training, the bulk of the less gifted, but earnest, seekers after knowledge may have every facility afforded to them for deriving the benefits of high education.

Of his work in the University Commission, Babu Ramanan Chatterjee says: "If education in a country be compared to a pyramid, Sir Gooroodas held that that pyramid should not only be very high but should have a broad base also. In other words, he wanted both the widespread of high education of the right sort among the people in general, as well as the attainment of the highest standard of that education by some of them."

The following quotation from his third and last Convocation Address to the Graduates of the Calcutta University sums up his advice to the students :

Now, one of the most distressing realities of the world you are going to enter is the immense disproportion between the many that toil and the few that succeed. If at any of the examinations held in this hall, there is heavy failure, the result attracts public attention and evokes criticism and steps are taken to prevent its recurrence in futuro. But who can criticise to any purpose the conduct of the world's examinations? We must take the world as it is; but if you cannot make the world conform to your views, you must not on the other hand servilely suit yourself to the world to achieve success. Depend upon it that there is often more honour in deserving success than in attaining it. Have firm faith in the consoling truths that in the inscrutable dispensation of Providence, out of evil cometh good, and that adversity is not an unmixed evil. I do not ask you to imitate the example of the pious lady in the Puranas who preferred adversity to prosperity because it enabled her better to remember her Maker, for prosperity is not necessarily an evil and should therefore be greeted when she comes. But I do ask you to submit, if it ever be your lot to do so, to adversity's chastening rule with calmness and fortitude..... If you are able to surmount these difficulties, if you can reconcile your practice with your principles and if furthermore, you can reconcile yourself with your lot, you shall have earned that peace within, that true source of happiness which even the most successful men often fail to attain. And your success will surely not be small if measured by the moral strength acquired which will stand you in good stead even in that awful stage of it that leads to eternity.

CONCLUSION

Sir Gooroodass was a man of high principles. When he was a Judge of the High Court, his old Sanskrit teacher of the Berhampore Pathasala wrote to him asking him if he would see the then Director of Public Instruction on the matter of his pension as by a mistake of the authorities he was made a loser by Rs. 30 per month. Now Sir Gooroodass had made it a principle not to ask a favour from any person for anybody. Consequently he sent Rs. 30 to the Pandit and promised the Pandit a regular remittance of the same amount every month during the tenure of his service in the High Court. We are told that

the Pandit too rose equal to the occasion ; and though he did not refuse the first instalment for fear of wounding Sir Gooroodass' feelings, he refused to accept further instalments.

To his children, Sir Gooroodass was a most affectionate father, discreetly indulgent, but a strict disciplinarian in all matters relating to their physical, moral, intellectual and spiritual advancement. Disregard of personal comforts and conveniences for the sake of religious belief is another striking feature of his character. He would not touch any food in the morning before he had finished his Pooja, and when as Member of the University Commission he had to travel great distances, he often passed a day or two in fasting when he could not get food prepared according to the orthodox Hindu style. He had very great faith in the sanctity of the Ganges water, and even when he was a Judge he could be seen on Sundays walking all the way to the river for his bath. An amusing incident is reported in this connection. An elderly Hindu woman looking out from the door of her house for a Poojari, as her priest was ill, invited Sir Gooroodass not knowing who he was, and we are told that Sir Gooroodass went in with a smile and sat before her family God and performed the worship in all its details and left the cottage with a homely bundle of rice and fruits in his napkin as a reward for performing the Pooja. And we are told that Sir Gooroodass looked upon this incident not as a bit of adventure but as part of his duty as a Brahmin. It was not mere extravagant praise that Sir Devaprasad Sarvadikary bestowed on him : "It will be for the generations that come after us to take up the story of his life and the greater story, I say deliberately, of his death. Inspired

with the underlying thoughts they go forth to the world and the stories will be invaluable as national assets, as few stories of life and death have been." For the manner of Sir Gooroodass' death was as remarkable as the manner of his life. While suffering from agonising pain during his last illness, he never betrayed it in his looks or in his movements lest it would cause pain and anxiety to those who were nursing him. Nobody, not even the physicians, could prevent him from talking to his friends and relations who came in numbers to pay their last respects to the great man after his removal to the river side. The shadow of death was hovering on his face; still without fear or despondency, Sir Gooroodass conversed on religion and philosophy and life after death. As death was approaching, instead of any signs of struggle, his face appeared to be illumined with a heavenly radiance. He died the coveted death of a true Hindu at a ripe old age in the presence of his sons and daughters gazing on the holy waves of Ganges and with the words of the Gita (chanted by his sons) ringing in his ears. In the manner of his death, the prayer of Valmiki to Mother Ganga was fulfilled :

सर्वाम नप्ते

Living on thy bank, drinking thy waters, with my mind resting in devotion on thy waves, remembering thy name and with my eyes directed towards thee let my body perish.

SIR PRAMODA CHARAN BANERJI

EARLY LIFE

SIR PRAMODA CHARAN BANERJI was a cousin of Sir Gooroodass Banerjee and he had an equally distinguished career as a Judge of the Allahabad High Court. He was born on the 10th of April 1848 and received his general education at the Presidency College, Calcutta. It may be noted that among his fellow students at College was the Rt. Honourable Sir Syed Amir Ali, Judge of the Calcutta High Court and later on a member of the Judicial Committee of the Privy Council. After graduating with distinction from the Presidency College, he obtained the Ryan Scholarship and studied law. He passed the B.L. Degree examination in 1869 and shortly afterwards in the same year he enrolled himself as a *vakil* of the Calcutta High Court. In his speech on the occasion of his retirement from the Allahabad High Court, he referred to his official career in the United Provinces in these words :

"After I had obtained my degree in law in the Calcutta University and practised for a short time at the Calcutta High Court, I joined this court as a *vakil*. Those were the days when the giants of the bar were men like Munshi Hanuman Prasad, Mr. Peary Mohan Banerji and Pandit Ajodhya Nath. The hand of time has wrought havoc in the ranks of the members of the bar, all of them have gone, save my friend, Charles Dillon. He, like me,

was a struggling junior when we practised together. After I had been in court for a short time, I was offered the appointment of munsif of the second grade. I had to choose between the bench and the bar, and rightly or wrongly I chose the bench. Subsequent events proved that my choice was not disadvantageous to me or was not a mistake, because I had not to begin from the bottom of the ladder. In a few years I was appointed a Subordinate Judge. On that occasion I was fortunate enough to supersede not less than 19 officers. After I had been a Subordinate Judge for a couple of years, I was appointed a judge of the Court of Small Causes at Agra. That was an appointment which till then had been held by uncovenanted Europeans, and I was the first Indian to hold it and since my appointment that office has been opened out to the subordinate judicial service. When I was appointed a judge of the Small Causes Court at Agra, I again passed over my seniors, not only in my own grade but in two grades which were above me, so that in eleven years I got to the top of the service as it then was. After I had been judge of the Court of Small Causes at Agra for a short time, I was appointed a judge of the Small Causes Court at Allahabad, which was an appointment reserved for and filled till then by the Members of the Indian Civil Service. I was the first uncovenanted officer to hold that appointment and I held it for a period of over seven years. I was then appointed an Additional Judge at Lucknow. I remember that when I was going to Lucknow, the gentlemen of Allahabad were kind enough to give me a farewell party. My late friend, Rai Ram Charan Das Bahadur said that he hoped that I would come back to Allahabad as a judge of the High Court. This hope was realised after four months, and I was appointed to this court about the end of

the year 1893. It is for the first time I took my seat behind my late friend, Sir George Knox. I also remember with what trepidation of heart I entered upon my duties following that eminent judge Mr. Mahmood. I feared that I would not be able to perform my duties with the same amount of ability as Justice Mahmood displayed."

AS A JUDGE OF THE HIGH COURT

He took his seat on the High Court Bench on the 20th of December 1893, and consequently was not affected by the rule enforced later on, *viz.*, judges of the High Court should retire on completing the 60th year. The Allahabad High Court at the time of his appointment consisted only of 7 judges, and under the provision of the Government of India Act about which India has been protesting from time to time although without any success, three of the judges had to be members of the Indian Civil Service and three others had to be barristers of Great Britain or Ireland. The result was that only one place in the Allahabad High Court was open to persons other than Civilians and barristers, and when Mr. Banerji, as he then was, was elevated to the High Court Bench from the sub-ordinary Judicial Service, there was no room on the High Court Bench for any *vakil* of the Allahabad High Court, and although the long tenure of office of Sir Pramoda Charan Banerji thus effectively denied to the *vakils* of that court all hopes of being elevated to a place on the Bench, the *vakils* as a body had great respect for the high qualities of Sir Pramoda Charan as a Judge, and it is only on his retirement that the *Vakils' Association* made representation to the Government of India that more places on the High Court Bench should be thrown open for the *vakil* section of the bar and protested against the passing over of the claims of the *vakils* in the matter even of acting appointments.

It is generally said that members of the Provincial Judicial Service do not make strong judges when raised to the High Court Bench. The reason is stated to be that during the long years of their subordinate service they have to work in a position of inferiority and are subject in administrative matters to the orders of the District and Sessions Judges. This long continuous subordination raises an apprehension in the public mind that if and when they are elevated to the High Court Bench and are called upon to act in terms of equality with other judges, whom they may have in the past regarded as their immediate superiors either as District and Sessions Judges or as Judges of the High Court, they may not display that independence of judgment which is necessary to inspire confidence in the public mind. But the worst critics of the system of promotion to the High Court Bench from the Subordinate Service could find nothing to say against the efficiency of such judges as Sir Pramoda Charan Banerji and Mr. Justice Ranade.

Sir Pramoda Charan Banerji has been a Judicial officer from January 1872 when he was appointed as a munsif in the second grade on the 1st of August 1923, when he retired from the High Court Bench; and this long period of over fifty years has been a continuous record of brilliant judicial work.

On the occasion of his retirement, Mr. Gulzari Lal of the Allahabad bar, speaking on behalf of the Vakils' Association, referred to the characteristics of Sir Pramoda Charan in these terms :

To say, my Lord, that your lordship has been uniformly courteous and patient in deciding cases and that you have always treated members of the bar with courtesy is to say something which is quite common. My Lord, you have succeeded in endearing yourself to everyone who comes in contact with you

in any capacity, and the parting which we have to bear is one which it is difficult to express in the depth of words. It would be presumptuous on my part, who has sat at your lordship's feet to learn what I know of law and practice of law, to say anything about the high excellence of your lordship's judicial work. The judgments which your lordship has been delivering from day to day for the last 30 years have always borne the stamp of care, of thoroughness and industry, and there has not been a single case in which the merits have not been thoroughly sifted and dealt with. My Lord, the large volume of reported judgments will be for all time to come an abiding monument of your lordship's ability and research, and would serve as beacon-lights and guide for the present generation of lawyers and for generations to come.

Having been in the Subordinate Judicial Service for over 20 years, Sir Pramoda Charan knew the needs of that service and the subordinate judiciary always found in him a sympathetic supporter. He had a great aptitude for Secretariat work, and he was mainly responsible for the preparation of the General Rules and Orders of the High Court, issued for the guidance of the Subordinate Civil and Criminal Courts in 1882. Moving the resolution of condolence at the Memorial Meeting of Allahabad soon after his death early in 1930, Dr. Kailas Nath Kutju reiterated the high praise bestowed on him by Mr. Gulzari Lal on behalf of the Vakils' Association on the occasion of his retirement, and said :

सम्मान सभा

I came in contact with the late Mr. Pramoda Charan Banerji in the High Court when I came to practice at Allahabad in 1914, and I and many other younger men at the bar will never forget the kindness and encouragement extended to us by that great and eminent judge. We had all learnt at his feet the principles of law which he expounded day after day in the cases that he decided.....Sir Pramoda Charan's impartiality, kindness and absolute sense of justice would for ever remain enshrined in our memory.

On the same occasion, Mr. S. P. Sinha referred to the notable fact that never during nearly 30 years of his career on the Bench was Sir Pramoda Charan seen ruffled in temper or speak an unkind word to the practitioners before him.

CHARACTERISTICS OF HIS JUDGMENTS

The general characteristics of his judgments may be now pointed out. His absolute lack of ostentation, and of any desire to display the great qualities that he possessed, are as obvious from his judgments as from his daily conduct. There was no striving for effect, no attempt to display his legal erudition, no display of an ambition to examine all the elaborate provisions of law pertaining to the case, no purple patches of *obiter dicta*, no digressions intended to impress on the legal public one's intimate acquaintance with other branches of knowledge like theology, history or social reformation. To quote Dr. Weir, "One could never read his judgments without knowing exactly what it was that he decided and why he decided so; and one always found these two things expressed with the greatest clarity and economy of language."

OTHER ACTIVITIES

Justice Pramoda Charan was Knighted in 1913, and the University of Allahabad conferred on him the honorary degree of Doctor of Laws in 1919. His work for the University was done unostentatiously. In the words of Mahamahopadhyaya Doctor Ganganatha Jha :

Very few people knew of the work he had done at the University. The speaker had the privilege of working at the University under him and had always looked up to him for advice and guidance for the last 25 years. It was no exaggeration to say that if the Allahabad University was what it was to-day, the credit for it was no less due to Sir Pramoda Charan Banerji than it was to Sir Sunder Lal and Sir George Knox. He was Vice-Chancellor for a short time only; but that did not mean that he was not at the helm of affairs at the University. For several years Sir Pramoda Charan was the Chairman of the Finance Committee of the University; and members of the old Syndicate knew of the deep and abiding interest he took in the affairs of the University. They owed much to him in the matter of creating and maintaining the traditions of the University of which they continued to be proud. Sir Pramoda Charan, even after his retirement, continued to help the University with his advice.



SIR PRAMODA CHARAN BANERJI

His numerous benefactions and "munificent private charities" attracted the notice of the Government which conferred on him the Kaiser-i-Hind Gold Medal in 1921.

PRIVATE LIFE

In private life, Sir Pramoda Charan was very simple, sincere and unassuming. "There was absolutely nothing ostentations about him. Not only did he never fall a prey to the modern craze for self-advertisement or popularity, but it might be said almost with literal truth that he shunned publicity and liked nothing so much as to be left to himself." He was regular in his habits and used to spend his well-learned long vacations in some sanatorium or hill-station accompanied by one or the other of his two loving sons. Living to the ripe old age, he had his share of family bereavements. He lost his wife in 1912 ; and although he was not able to recover fully from that sad bereavement, he maintained his usual genial temper and equanimity to the very end of his life. And as Mr. Chintamani remarked on the occasion of his death :

He died at a ripe old age without ever having lost a friend and ever having made an enemy. He had his share of mortal sorrows which no one could hope to escape. But take him all in all and I venture to think it will be generally agreed that hardly any one lived a more fortunate life, as hardly any one lived a more virtuous life among those whom we have known.

HIS LOVE FOR THE LAW

Even after his retirement in 1923, Sir Pramoda Charan Banerji was taking a keen interest in law and lawyers till his death on the 26th of March 1930, when he passed away full of years and honours, retaining his mental faculties unimpaired to the very end. He left behind him two sons, Mr. Justice Lalit Mohan Banerji of the Allahabad High Court (who continues, in the Allahabad Bench, as has been expressed facetiously 'the Banerji tradition') and Mr.

Rajani Mohan Banerji. For nearly sixty years, Sir Pramoda Charan Banerji was a well-known citizen of Allahabad. He utilised the long vacation every year in visiting the several hill-stations and sanatoriums in India. This, along with his regular habits, was responsible largely for his long life of useful public service. Writing in the *Leader* on the occasion of his death, Mr. S. P. Sanyal referred to him in these words :

The erect walk, the measured gait, the neat dress, the genial smile, the clock-work regularity which I noticed in him then, marked him all his life. Restraint and reserve, qualities of culture, were to him nature's gifts. His gentleness of temper and his suavity of manner never deserted him, even in the most trying moments.....Another trait of his character was his unostentatious charity which benefited a large circle of men, women and children in need of help. A devoted husband, an affectionate father, a loving friend, Sir Pramoda Charan Banerji never hurt any one's feelings or offended any one who came in contact with him. His tact and good sense bound his friends to him for all time. During the last summer I had the pleasure of meeting him at Mussoorie in Catherine Ville where latterly he used to spend half the year. I spent a day with him. All his faculties were still unimpaired, save his sight. He was as particular about the comfort of his guest, as he used to be before. We talked on various subjects as usual, and he showed no sign of failing health. The conversation was never dull or insipid.

AN ESTIMATE OF HIS CHARACTER

The characteristic qualities of Sir Pramoda Charan Banerji were also emphasised by Mr. C. Y. Chintamani, Editor of the *Leader* on the occasion of the Memorial Meeting at Allahabad :

Sir Pramoda Charan Banerji was the most simple, sincere and unassuming of men, and there was absolutely nothing ostentatious about him. Not only did he never fall a prey to the modern craze of self-advertisement or popularity, but it might be said almost with literal truth that he shunned publicity and liked nothing so much as to be left to himself. It is a mistake to think that because he loved a more or less secluded life outside the High Court, therefore he did not follow with keen interest the public events from day to day. Those who had the advantage of private talks with him, knew that although he had never been in public life, and although

he was not expected, very busy as he was with his own work, to be in touch with public movements, he not only followed events with the closest interest but was in a position to give, advice, and willingly gave it to those who sought it. His advice was of great value to persons actively engaged in public contentions.

Sagacity and judgment, freedom from bias and absolute independence with which he formed his decisions and conveyed them in language so mild that he could not have offended a fly or an ant, were certainly the most remarkable traits of his character. It was not only that his independence and judicial qualities shone on the bench of the High Court or came into evidence in private talks, but when his advice and opinions were sought in his official capacity as a judge by the Government on public questions on which opinions of judges were asked, he stated his own views on those subjects with a precision, a conscience, an ability, a knowledge and fearless courage which would have done the greatest credit to the foremost public man of the day. I had the advantage for the brief space of a little over two years of reading the confidential opinions of men in high and responsible positions conveyed to Government in compliance with their request, and I have made no secret of my opinion in talks with friends ever since that I have never had the privilege of reading expressions of opinion so thoughtful, so independent, so progressive and patriotic as the opinions of Sir Pramoda Charan Banerji on contentious public questions which were placed before him by the Government.....

APPRECIATIONS BY LAWYERS AND LAYMEN

Sir Pramoda Charan passed away on Friday the 26th of March 1930, full of years and honours. "He was," to quote the words of the *Allahabad Law Journal*, "a great judge and a great gentleman, and his life shall for a long time be an example and an inspiration to younger men."

On the 29th of March 1930, the Monday following his death, references were made in the Court of the Chief Justice of Allahabad. The Chief Justice, in the course of his reply, said :

As he was for many years a great figure on the bench of this Court, in whose length of service and distinction of service we all took pride: it is fitting for us to meet here to-day to express our regret at his death and our sympathy with his relatives.

I sat with him in this very Court almost continuously from the day of my arrival in 1919 until his retirement in 1923;

no one had a better opportunity of forming a just estimate of his kindness of heart, his knowledge and his balanced outlook.

. . . . He had, as a foundation, abundant vitality without which so sustained an achievement as his, spread over, as one might say, two life-times, would have been impossible. He possessed a clear and powerful brain, and being by temperament industrious, after years of hard work, became a profound lawyer. His higher gifts of character and kindness of disposition drew all of us to him.

Though he has passed away, his work remains. The lawyer of the moment is to a large extent guided and controlled by the lawyer of the past. Generations of students, practitioners and judges yet to come will study, analyse and approve his judgments; and their minds moving with and following the current of his thought, will acknowledge his intellectual eminence. We who knew him, can complete the picture by our loving remembrance of his modesty, charm and courtesy.

Chief Justice Mears, on another occasion, facetiously referred to Sir Pramoda Charan as his "father-in-law". As Sir Pramoda himself pointed out on the occasion of his retirement, he had during the thirty years of his High Court Judgeship sat with six Chief Justices and with more than twenty puisne judges; and to all of them, sitting with him seems to have been an education, not only in the intricacies of the Indian law but also in judicial courtesy and demeanour. Mr. O'Conor acknowledged his unfailing courtesy to the English Bar, at Allahabad, in these words during the reference to his death in 1930 in the High Court :

We realised that in him we were in the presence of a very loveable personality, both as a man and as an admirable judge. He had, during the twenty years' service which he put in before coming on to the bench of this Court, shown that he had in him all the qualification of a good and great judge; and he had been but a short time with us here when we all learnt to congratulate ourselves on the choice which His Majesty deemed in making him one of the Judges of our Court; and we never ceased to congratulate ourselves during the thirty years which followed his appointment.

To patience and courtesy, admirable in themselves, he added a profound knowledge of Law and an extraordinary capacity of disentangling a tangled mass of facts and lucidly marshalling them. In fact, it is difficult to say which we had to

admire most--his capacity for dealing with facts or his capacity for applying the law to those facts. To the clarity of his reasoning and the lucidity of his language, he added a total absence of all prejudice; and one was impressed throughout by his desire and determination to get at the truth and to do justice between man and man. More than this one cannot ask for in the greatest judge.

On the same occasion, the Government Advocate, Mr. Bajpa, remarked :

He had the confidence of every Chief Justice under whom he served, the respect of every colleague and love of every member of the Bar who happened to practise before him; and it might be acknowledged that his great learning and mastery of justice principles raised the prestige of the Allahabad High Court in the eyes of the entire legal world.

If we add to this the well deserved tribute of the Indian Bar expressed through Sir Tej Bahadar Sapru, it will be obvious that no eminent judge had fuller honours and better appreciations than Sir Pramoda Charan Banerji.

Said Sir Tej Bahadur :

During the thirty years that Sir Pramoda was on the Bench of this Court, he made very solid contributions to the elucidation of our law.

No judge has done more to elucidate our law of mortgages than the late judge Sir Pramoda Charan-Banerji. On questions of Hindu law, he was a recognised authority. Not only did the judges of his generation and his successors in this Court pay the utmost possible respect to his expressions of opinion, but also the judges of other Courts looked up to his judgments with great respect.

"Barely three years had passed after his elevation to the High Court Bench when he delivered a judgment which will always stand out as a historic exposition of the law relating to adoption, a judgment which was warmly approved by the Privy Council."

In conclusion, one may be permitted to refer to the unanimous resolution of the Advocates and Barristers' Association of the Allahabad High Court and to the

President's speech at the Memorial Meeting, at Allahabad, on the 6th April 1930. The former ran in these terms:

The late Sir Pramoda Charan Banerji occupied for thirty years of his life a most towering position on the Bench and was universally respected for his unsurpassed legal attainments, judicial qualities and temper.

And the President, at the Memorial Meeting, stated in the course of his speech:

As a layman, I may permit myself to say this much and no more without presumption, that ever since I came to this province, now about 27 years ago, I have seen and known many judges of the High Court, but I have neither seen or known a single one of them who inspired more confidence and greater respect for his qualities as a judge than Sir Pramoda Charan Banerji did.



JUSTICE SARADA CHARAN MITRA

WHEN Sir Gooroodass Banerjea retired in 1904 from the Bench of the Calcutta High Court, Mr. Sarada Charan Mitra who had previously acted for him for a short period in 1902, was appointed to the permanent vacancy. In many respects, Mr. Sarada Charan Mitra resembled his predecessor Sir Gooroodass Banerjea. Like Sir Gooroodass, he was a self-made man; and like him too, he had a brilliant University career; like him, he continued to the end of his life to take a keen interest in educational problems and in the development of the Bengali literature; but whereas Sir Gooroodass was, belonging as he did to the older generation, brought up in the orthodox Brahmanism and became consequently an intelligent supporter of the old world orthodoxy, Mr. Mitra belonged to the more progressive Kayasthas of a younger generation and was an ardent social reformer in consequence.

EARLY STRUGGLES

Mr. Sarada Charan was born in the village of Pani-sheola in the Hooghly district of the Bengal Presidency on the 19th December, 1848. The Mitras of that village were high caste Kulins; and Mr. Ishan Chandra Mitra, the father of Sarada Charan Mitra, was a prosperous *bania* trading in Calcutta. Sarada Charan spent the early years of his childhood in his native village, and the rural surroundings of that village were responsible for developing in him a passionate longing for country life; they also

serve to explain how Mr. Mitra chose his hobby as the kindred subjects of floriculture, horticulture and agriculture.

It is worthy of note that during the busy days of his life in Calcutta as a lawyer and later on as Judge, he used to go back to his native village as often as he could and devote himself to his hobby.

Young Mitra was put to school, as is usual among the Hindus, at the age of five, and he learnt Bengali at the Pathasala in the native village. His mother died when he was only six, leaving behind her, besides Sarada Charan Mitra, another boy and a girl. Sarada Charan who was of delicate health even in his boyhood, had to leave off studies for a while on account of this calamity.

From the village Pathasala, Sarada Charan was sent at the age of seven to the Vernacular School at Sibpur, near Howrah, where his father resided for carrying on his business at Calcutta. Here his elder brother died in a few months, and young Mitra was sent back again to his native village for recouping his health which was affected by his stay at Howrah. For nearly a year and a half, he was not able to attend school in consequence; but young Mitra could not remain idle. He read the Bengali books available in his native village and managed also to pick up a knowledge of English, with the assistance of his playmates who were studying in an Anglo Vernacular School near-by. This period of stay in the village served to develop in him a taste for gardening.

In the month of August 1858, Sarada Charan Mitra was placed under the care of his uncle at Calcutta, in order that he might study at the Coolootola Branch School (which afterwards became famous as the Hare School) which was then under the care of the Headmaster, Babu Peary Charan Sirkar. At school, Sarada Charan was found first in his

class ; and he passed the Entrance Examination of the Calcutta University held in December 1865, as first in the Presidency.

A BRILLIANT ACADEMIC CAREER

As a result of this brilliant success in the Entrance Examination, Babu Sarada Charan was offered a scholarship for completing his education in England. But his father's cousin who had taken him under his care on his father's death, would not allow him to go to England. Consequently he joined the Presidency College in January 1866, and he passed the First examination in Arts held in December 1867, again as first in the Presidency. He obtained also, on account of his getting the first place in Mathematics in this examination, the Duff Scholarship in Mathematics. Shortly after this success in February 1868, he was married to a grand-daughter of Raja Sir Radhakanta Dev Bahadur. In January 1870, he passed the B.A. degree examination and was bracketed first in the Presidency along with another ; and he was awarded the Ishan Scholarship. Within a month after taking his B.A. degree, Sarada Charan sat for the M.A. degree examination and stood third among the successful candidates of that year, obtaining high honours in English. This unbroken series of brilliant successes at the University examination created a record in the annals of the Calcutta University, and he obtained the Premchand Roychand studentship, taking as his optional subjects of study, English, Sanskrit and History. During the course of his studies as a law student, he was also a lecturer of English in the Presidency College for a year, and he left it in order that he may appear for the B.L. examination.

Babu Sarada Charan was a voracious reader of books ; he was quite at home, not only in English and Bengali

literature but also with Virgil and Horace and other masterpieces of Latin poetry. Among the Indian languages he also learnt the more prominent North Indian vernaculars and particularly Marathi. He learnt Persian in order that he might read some of the Persian classics in the original. He was a keen student of comparative philology, and he broke new ground by the publication of a noteworthy article on "The Philosophy of the Bengali Language". During his career at the University, he devoted considerable time to research in Bengali literature and brought out a notable edition of the songs of Vidyapati. It is specially noteworthy that all this work was done while he was in indifferent health and was suffering from frequent attacks, not only of dyspepsia but also of malaria.

Babu Sarada Charan took his B.L. degree early in 1873, and on the 22nd of March was enrolled as a vakeel of the Calcutta High Court. The Calcutta bar was even then overcrowded; and Babu Sarada Charan had not the benefit of any sponsors or other special aids to success; but his excellent legal equipment served to bring him gradually to the forefront; the judges began to appreciate his arguments which were presented with characteristic lucidity as regards law and an excellent marshalling of the facts of the case.

LITERARY INTERESTS

Babu Sarada Charan used the comparative leisure of the lean years of his career at the bar to progressing in his side occupation. He wrote frequently to contemporary journals on topics relating to the Bengali literature. He was practically the editor of the Howrah newspaper *Hitakari* for a number of years. He was responsible for an edition of the *Kayasthakarika* which traced the geneology of the Kayasthas of Bengal. He was an active

Municipal Commissioner of Calcutta from 1875 to 1881. He became a member of the Central Text-book Committee of Bengal and did useful work till the abolition of the Committee in 1900. When the Committee was revived again in about the year 1905, he was again made a member of the Committee and continued to take an active part in its work.

At the Calcutta University also, Babu Sarada Charan did yeoman service as a member of the Senate and as a member of the Faculties of Arts and of Law and as a representative of the Faculty of Law in the Syndicate; he was called upon to deliver the Tagore Law lectures in 1895; and the lectures on "the land law of Bengal" (which were later on collected and published as a book) are a brilliant exposition of the land tenures of Bengal and the development of the law relating thereto.

AS JUDGE OF THE CALCUTTA HIGH COURT

Babu Sarada Charan was a noted leader of the vakeel section of the Calcutta bar when, in February 1902, Mr. Justice Goornodas Banerjee was deputed as a member of the Calcutta University Commission. The choice therefore fell on him to fill up the temporary vacancy. The qualities which characterised his work as a vakeel were also prominently in evidence in his work as a judge. As a lawyer, we are told, Babu Sarada Charan spoke briefly and to the point, displaying a rare grip of the legal principles governing the particular case and presenting a complicated and tangled mass of evidence in a cogent form. These characteristics distinguished his judgments also; the law relating to the particular case was clearly and briefly enunciated and the facts decided on with unerring judgment. It was therefore not surprising that when further vacancies arose, due to the temporary absence from the Bench of Sir

H. F. Princep, Mr. Justice Sale and Mr. Justice Hill, he was invariably chosen to occupy their places; and when in February 1904, Mr. Justice Gooroodass Banerjee retired from the Bench, he was appointed to that permanent vacancy.

Mr. Sarada Charan Mitra was acting judge from the 18th February 1902 to 4th September 1902, and again from 17th March 1903 to 3rd September 1903, and was permanent judge from February 1904 till he retired on completing his sixty years on the 18th December 1908.

Writing on the occasion of his death on the 4th of September, 1917 (nearly nine years after his retirement from the High Court Bench), the *Calcutta Weekly Notes* in a short note referred to his work as a judge in these words :

A man of wonderful energy and perseverance he soon made his mark in the profession, and while in the enjoyment of a large practice as one of the recognised leaders of the Vakeel Bar, he was elevated to the Bench. His work as a judge is a record of brilliant success. Thoroughly independent, with a sound knowledge of law and a wonderful quickness in grasp of facts, he was one of the ablest judges that ever sat on the Bench of the Calcutta High Court. Whether in civil or criminal law he was always at home; and the pages of the *Law Reports* bear ample testimony to his sound commonsense and clear exposition of legal principles. For about a year and a half, he almost continuously presided over the Criminal Bench at a time when the file was particularly heavy, but it seemed that with his phenomenal capacity for quickly sifting facts he could do the work of two or more judges. It was in his time that Criminal Motions used to be taken every day and yet the rest of the cases on the list never fell into arrears. He kept his head cool on the Bench during the troublous times of the Partition of Bengal and always administered justice unswayed by any reasons of political expediency. His dispassionate administration of criminal justice did to a great extent maintain public confidence in the High Court when political passion was running high. While in the full possession of his energies he had to retire under the sixty years rule which at least in his case worked hardship. . . .

During this period of nearly six years he earned a name for himself as a very capable and upright judge. It is remarkable that, although he had not, during his career as a lawyer, handled criminal

cases, his decisions as a judge in criminal law stand out as leading cases on the subject.

SOME FAMOUS JUDGMENTS

In the case of *Veni Bhushan Ray vs. Emperor*, he had occasion to define the word *Swaraj*, and he did it as follows :

The word *Swaraj*, if it was used, does not necessarily mean government of the country to the exclusion of the present Government, but its ordinary acceptance is 'home rule' under the Government. The vernacular word used, if literally translated, would mean *self-government*, but self-government would not necessarily mean the exclusion of the present Government or independence. It may mean, as it is well understood, government by the people themselves under the King and under British sovereignty.

And in the course of the hearing of that case, Mitra, *J.*, remarked that every Indian likes to have *Swaraj*, meaning home rule.

In the *Vande Mataram* sedition case, he set aside the order of confiscation of the press passed by the Lower Court for printing seditious matter and observed in his judgment (which included Fletchier, *J.*, along with him) :

We are also of opinion that the press could not be said to have been used for the commission of the offence in the same way as a gun, sword or a dagger. The offence was publication and not printing and the press is a remote instrument.

It may be here noted that it was this decision that forced the Government of India to seek the aid of the Legislature for the passing of 'the Press Act'.

Another notable judgment of his on criminal law is the case of *Deputy Legal Remembrancer vs. Satish Chandra Roy*, popularly known as the *swordstick* case. He defined the rights of under-trial prisoners to be admitted to bail in *Johar Mal's* case. In these cases as well as in the *Midnapur* conspiracy case, he showed not only clear grasp of the principles of criminal law, but also fearless independence in expounding them.

LAND TENURES IN BENGAL

His decisions on other fields of law are also noteworthy. As a lawyer he appeared in many leading cases where the law of the land tenures in Bengal had to be discussed from several points of view, and his familiarity with the intricacies of land law helped him considerably in quickly grasping the facts of complicated cases relating to land tenures which came up before him for disposal; and his judgments on this branch of the law are consequently highly elucidating.

As was pointed out by the *Calcutta Weekly Notes*, his most valuable contributions have been in the province of the law of land tenures. Of these we need only mention the cases of *Pandit Lachmi Narayan vs. Sheikh Mazhar* (12 C. W. N. 650) and *Ijarulla Bhuyan vs. Chandra Mohun* (12 C. W. N. 285) in which the principles upon which mesne profits in respect of khamar or zerait land are to be assessed have been reviewed, the case of *Ram Sundar Shaha vs. Secretary of State* (11 C. W. N. 928) in which the peculiar incident of certain *nabab* taluks of the Chittagong district are discussed, the case of *Rameshwar Singh vs. The Secretary of State* (11 C. W. N. 448), where the history of *malikana* and *dashturat* grants of Behar is reviewed, with remarkable power and insight. His dissentient judgment in the Full Bench case of *Fundit Lachmi Narayan vs. Sheikh Mazhar* (11 C. W. N. 626), in which the question was whether the rights of a non-occupancy raiyat are heritable, is an instance of close reasoning and displays his knowledge of the history of the law of landlords and tenants of this province. His judgment in the case of *Debendra Nath Dutt vs. Administrator-General* (10 C. W. N. 673) has been recently affirmed by the Privy Council.

As regards the development of the Bengal school of Hindu law, Mr. Mitra took a very definite attitude. He was of opinion and rightly that spiritual benefit was not always the guiding principle of inheritance under the Bengal school of Hindu law. The *Dayabhaga* has the prevailing voice in that school only where it differs from the *Mitakshara*, and in many respects the two books are largely supplementary to each other. This view of Mr. Mitra's on the scope of the spiritual benefit theory in the Bengal

school of Hindu law found expression in the case of *Akshoy Chandra Bhattacharya vs. Haridas Goswami* (12 C. W. N. 511) in these words :

Notwithstanding the predominance given to the theory of spiritual benefit by the writers on the Bengal school of law, they have not adhered to it in the case of re-united co-parceners ; they have excluded separated co-parceners and given preference to re-united co-parceners instead of applying the theory of spiritual benefit. It is clear they have ignored the theory of spiritual benefit whenever there is a contest between separated and re-united co-parceners in the same way as they have ignored it in several other cases. Principles other than spiritual benefit have often been applied, as will be apparent from even a cursory reading of the great work of Jimutavahana. I am quite sure that if they could contemplate a case like the present, they would have laid down that preference should be given to the joint as against the separate kinsman. . . .

. . . In the case of succession to the property of a man who dies leaving both a joint nephew and a nephew who or whose father was never joint, other principles and not spiritual efficacy should be, in my opinion, taken into consideration as Jimutavahana has done so in similar and numerous other cases. In cases not contemplated by him or his followers in the Bengal school of law, the law should be developed on rational lines consistently with the principles followed in similar cases and the decisions of our Courts should not be based on a blind adherence to a principle which would lead us to the violation of other recognised principles consistent with natural justice.

Spiritual benefit, notwithstanding some authorities to the contrary, is not always the guiding principle of inheritance under the Bengal school of law. The theory of spiritual benefit cannot apply to a good many cases of inheritance under the Dayabhaga school of law. Spiritual efficacy as a principle guiding rules of succession must fail in the cases of all female relations. The widow, the daughter, the mother, the paternal grandmother are said to inherit under express texts. It was necessary in their cases to have recourse to a different principle, and that principle must have been affinity and affection which had led the more ancient sages to say that they come in the line of heirs. Yajnavalkya's text as well as the texts of many other sages could not be either avoided or reconciled with the theory of spiritual efficacy in all cases. In most cases, propinquity, spiritual efficacy and natural love and affection run in the same lines and no difficulty arises ; but whenever they run in different lines, Jimutavahana was compelled to ignore spiritual efficacy and had recourse to other principles or express texts.

We must next see what in such a case as the present, the older authorities have laid down and whether they have

been expressly dissented from by Jimutavahana. An express dissent by the authorities of the Bengal school of law will preclude our adopting the rules laid down by the older and the more orthodox authorities. The sages whose texts have been interpreted in the Mitakshara were undoubtedly of opinion that a co-parcener who is joint, is entitled to preference under the law of survivorship. If, as has been found in this case, Lal Mohan was joint with Nanda Gopal, he would succeed according to the Mitakshara, which, in my opinion, should be the guiding principle in the absence of any express texts or commentaries of the Dayabhaga school of law. I would, in all cases of absence of texts or precedents under the Dayabhaga law, have recourse to the theory of propinquity and natural love and affection as adopted by Vigneswara and the commentators of the more ancient and orthodox schools of Hindu law. They are highly respected by lawyers of the Bengal school, and I would make the law of Bengal correspond with the law as administered in the rest of India.

CRIMINAL LAW

But the more notable of his judgments are on topics of criminal law; a few of them will be referred to hereunder:

In this case of *Johur Mull*, a *pardanashin* lady and three other persons were charged along with some other four other persons with the murder of one Ghaseeram. At the Coroner's inquiry, although the wife of the accused implicated these persons in the murder, the verdict was that the act was committed by some persons unknown. There was a conflict between the case against Johur Mull and the three persons associated with her name and the case against the four other persons. It was argued for the Crown that bail ought not to be granted in trials for murder and that if bail were allowed the accused let out on bail might tamper with witnesses. Mr. Mitra who delivered the judgment on behalf of his colleague Ormond, J. also, rightly protested against the remark that "if bail were allowed, the accused persons might tamper with witnesses". He pointed out:



SABADA CHARAN MITRA

Ordinarily, we do not allow bail in cases like the present, but we have power under Section 498 of the Code to direct that any person should be admitted to bail *in any case*.

The first matter which we have to look to is, whether, in the words of Section 497, there appears now reasonable grounds for believing that the accused persons are guilty of the offence of which they have been accused. If there appear no reasonable grounds for such a belief, the Magistrate who is now holding the enquiry before commitment had the power to direct that the persons accused should be released on bail; and in the exercise of the power which is given to us by Section 498 of the Code we can revise the order of the Magistrate and say that he should have exercised his discretion in granting bail. . . .

On the conflict as regards the cases against the different persons accused in the same case of murder, and the verdict of the Coroner's jury, we think it proper until further evidence is adduced implicating the petitioners they should be released on bail.

In (13 Calcutta Weekly Notes, page 51) the case of *Jamini Mullik vs. The King-Emperor*, Mitra J.'s judgment prevailed over that of the Junior Judge Mr. Cox and in that judgment he laid down the principles that should guide Courts in granting bail to under-trial prisoners. The accused in these cases were charged with conspiracy. Mr. Mitra said :

The main question we have to consider in connection with these petitions is, Are there reasonable grounds for believing that the petitioners are guilty of the offences of which they have been accused? Other considerations must also arise in deciding the question of releasing the accused on bail; and one of these, which have always guided Courts of Justice both in England and India, is whether there are any grounds for supposing that the accused, if released on bail, would abscond and attempt to escape justice by avoiding or delaying an enquiry or trial. . . .

If, after a remand, evidence of an incriminating character is not adduced, and if the prosecution had already sufficient time to adduce such evidence, the Court would reasonably come to the conclusion that such evidence was not forthcoming at the time. It should then under sub-Section (2) Section 497 release the accused on bail, whatever be the nature of the offence, though the preliminary enquiry should proceed.

Whether there are reasonable grounds or not, is a question which must be decided judicially; that is to say, there should be some tangible evidence on which, if unrebutted, the Court might come to the conclusion that the accused might be convicted.....

If there be no evidence whatsoever or evidence of a very flimsy character on the face of it, the influence would naturally be, after a reasonable time has elapsed since the beginning of the enquiry, that there are no reasonable grounds for supposing that an accused is guilty.

Mr. Mitra was particular that the proper procedure should be followed in the conduct of criminal cases and his protests against the illegal orders of the District Magistrate who set at naught the provisions of the Criminal Procedure Code in the case of Fani Bhushan Banerjee might be of interest.

Mr. Fani Bhushan Banerjee was a delegate to the Bengal Provincial Conference held at Barisal in 1906. While proceeding to the Conference he was assaulted by Mr. Kemp, the District Superintendent of Police and some other members of the Police force. His complaint to the Police against them was not entertained. Thereupon he appeared before Mr. Ghose, the Deputy Magistrate, filed a petition of complaint and was examined in support thereof. But Mr. Ghose, instead of passing orders himself, sent the file to the District Magistrate Mr. T. Emerson. It appeared that this was done in pursuance of the directions of the District Magistrate which, while authorising him to receive petitions and examine complainants, required that as regards a particular class of cases, the file should be sent to District Magistrate for orders. Such a direction by the District Magistrate was clearly illegal. Besides, in this case, the District Magistrate gave no opportunity to the complainant or his Counsel to be heard. This was a denial of a fundamental right of the citizen. To quote from the judgment of Mitra, *J.* :

On the same day, the District Magistrate passed an order dismissing the complaint. He did so, sitting in his private room and without giving the complainant or his pleader an opportunity of being heard. This was also improper.

In a prosecution for perjury on the ground that a person swore that property standing in his name was his own whereas the Civil Court found him a *benamidar* for another, sitting with Holmwood, *J.*, Mr. Mitra rightly pointed out the scope of such prosecutions in these words :

The case is a curious one. It raises the question of *benami* which arises generally, if not always, in Civil cases only. The decision on such questions generally depends on circumstances and probabilities ; and Courts proceed upon the balance of probabilities. Positive or direct testimony is generally wanting in such cases. In law, the person in whose name a document is executed ought *prima facie* to have the benefit of the document ; and he is supposed to be the owner of the property by virtue of the document. . . Equitable doctrines are resorted to for the benefit of the true owner or persons who claim benefit on account of such beneficial ownership ; but it would be stretching the criminal law too far to impart the doctrines of beneficial ownership in such matters. This ground alone is sufficient to show that the proceedings in this case ought not to have been allowed to go on. . . .

In order to make out a case against the accused of giving false evidence in a judicial proceeding, it must be shown conclusively that the statement was false. It is not sufficient to show that the probabilities are that the statement was false.

In the course of the judgment, it was rightly pointed out that " persons who had not a variety of transactions did not generally in this country keep accounts",--a statement that requires to be borne in mind by judges in India who are asked to draw adverse inferences from mere non-production of account books.

In the case of *Kali Charan Ghose*, Mitra, *J.*, (with whose order Holmwood, *J.*, concurred) transferred the case from the file of the trying Magistrate. In doing so, he had to condemn the refusal to adjourn the case to enable the accused to apply to the High Court for transfer. The trial Court was anxious to proceed with the examination of prosecution witnesses before granting the adjournment, because it was " apprehensive that the case may be settled amicably out of Court and the witnesses might not afterwards be available and if available might not speak the

truth against the accused". Although this belated adjournment is not contrary to the Criminal Procedure Code, it was held by Mitra, *J.*, not to be proper in the circumstances :

But at the same time, I am of opinion that it is not desirable that the authority to go on with these proceedings until the accused is called on for his defence should be ordinarily exercised. The prayer for postponement or adjournment should, unless the case is exceptional in character, be granted at once. If a transfer be allowed by a higher Court, it may be necessary to examine the same witnesses over again, the record already made being thus rendered practically useless. It is harassing to the parties as well as the witnesses to have the same record made a second time.

Then follows the memorable passage about what may form a reasonable ground for transfer of a criminal case :

The order of the Sub-Divisional Magistrate on the petition for postponement and his explanation to this Court fully display his anxiety that the accused should not escape punishment if they are really guilty. The offences are not compoundable; and the Sub-Divisional Magistrate has expressed in unequivocal terms his desire that the case should not only be not amicably adjusted out of Court which cannot be without the Court's consent, but that the witnesses for the prosecution might not be tampered with in any way. Such a desire is natural and proper in those who are entrusted with the duty of preserving public tranquillity and in the present constitution of the criminal judicial administration of the country such a desire, however openly avowed, cannot be found fault with. A Sub-Divisional Magistrate has to perform some of the functions of the Police in the matter of preservation of peace and on the discovery of criminals and he has also to perform the functions of a judge in the trial of those who are guilty of the commission of offences against public tranquillity as well as offences against human body and property. Looked at from the point of view of the accused, the words used and acts done by him tending to show such a desire, when he is himself the judicial officer, may raise, not unnaturally, in the minds of the accused an apprehension that they may not have a fair and impartial trial. A well-balanced and impartial mind capable of tracing the true springs of human actions and discovering their harmony, however apparently incongruous the actions may be, may not find any bias in the mind of the Judge; he may approve of his acts and conduct. But the appreciation of a mind properly constituted cannot be the standard to judge of the feelings of an ordinary man accused of a criminal offence. If the words used by and the actions of a judicial officer, though susceptible of explanation and traceable to a superior sense of duty, are calculated to create in the mind of the accused an apprehension that he may not have an impartial trial, the question arises

whether it is expedient for the ends of justice that the case should be transferred to another judge for trial, a judge who is not so far as the particular locality is concerned, entrusted with the duty of preserving public tranquillity and the detection of crimes.

This passage contains in itself a sufficient condemnation of combining in one officer police and judicial functions and the transfer order in this case makes out a strong case for the separation of the executive and judicial functions. Another sensational case in which Mr. Justice Mitra displayed characteristic fearlessness and independence and affirmed the fundamental rights of a citizen is the case of *Babu Surendranath Banerjea* (afterwards Sir Surendra Nath). Babu Banerjea was arrested by the District Superintendent of Police on the allegation of having committed an offence under Section 188 Indian Penal Code ; he was taken on a holiday to the residence of Mr. Emerson, District Magistrate. Adjournment to enable the Babu to have legal assistance was refused. Mr. Emerson, while taking down the deposition of the District Superintendent of Police, seems to have characterised Babu Surendranath's conduct as disgraceful which the Babu protested by interruptions ; thereupon the Magistrate fined him under Section 480 Criminal Procedure Code for contempt of Court under Section 228 Penal Code. The District Judge refused to interfere. In the High Court, Mitra, J. (with whom Holinwood, J., concurred) pointed out that although the procedure for a trial of a contempt of Court is summary, yet "the Legislature has guarded the rights of the subject by making it imperative on the Court dealing with a person summarily under Section 480 to record the facts constituting the offence with the statement (if any) made by the offender as well as the finding and sentence" ; and further "if the offence is under Section 228 I. P. C. the record shall show the nature and stage of the

judicial proceeding in which the Court interrupted or insulted was sitting and the nature of the interruption or insult". Mr. Emerson had not only failed to comply with these provisions of the law but has also committed the grave error of correcting the record three days after the order was made and in the absence of the accused. Mr. Mitra pointed out:

The record of the proceedings before the District Magistrate of Backergunge which is laid before us for revision is as follows:

Bahu Surendra Nath Banerjea produced before me as a prisoner arrested in course of an affray with the Police was repeatedly ordered by me to keep silence while I was passing orders in his case after the case was decided. As he disobeyed (T. E. 17-4) I order him under Section 480 Cr. P. C. to pay under Section 228 I. P. C. a fine of Rs. 200 or in default to go to jail for one week. (Sd.) T. Emerson. 14-4-06. Given an opportunity of apologising but refuses. (Sd.) T. Emerson 14-4-06. . . .

In considering this case we must omit from the proceedings the words "As he disobeyed (T. E. 17-4) as they were added and added very improperly three days later, *i.e.*, on the 17th April. No Magistrate can add to or alter the proceedings or judgment after they are signed and published. It is especially irregular when made in the absence of the accused and without notice to him. . . .

A full and clear record as contemplated by Section 481 is not only a guarantee of the coolness and judicial temper of the presiding officer but also affords materials for the Appellate Court to proceed on. . . .

We may however observe that not only was no record made of what Surendra Nath Banerjea said or did causing interruption to the learned Magistrate as required by the law, but it does not appear from the record that he was doing anything more than writing the judgment. The judicial proceeding—the trial of Surendra Nath Banerjea was practically over at the time. If the Magistrate was writing his order, he could do so in the absence of the accused. The presence of the accused at that time was not at all necessary; and if the Magistrate found the accused who had not an opportunity given to him for being defended by Counsel using words which caused interruption, he should have asked the accused to sit elsewhere until the writing of the order was finished. We cannot find any justification for the proceedings for contempt of Court in the circumstances of the case. The principal ingredient of an offence under Section 228 I. P. C. is *intentional* insult or interruption. More uttering of words and not keeping silent can hardly be construed as *intentional* insult or interruption

caused by an undefended prisoner during the course of a judicial proceeding against him and there are no materials on the record for a conclusion adverse to the accused.

His judgment in the case of *Devendra Nath Dutt vs. The Administrator-General of Bengal* helped in the elucidation of law on a difficult question ; he agreed in that case with the Chief Justice and Geidt, *J.J.*, and formed the majority opinion against the contrary opinions of Harrington and Stephen, *J.J.* The question involved in that case was whether the sureties to the grant of letters of administration (which were void being obtained fraudulently and on behalf of a fictitious person) were liable on their bonds. The paragraph from Mr. Mitea's judgment stating the law in his characteristic brevity and lucidity is extracted below :

The liability of the sureties did not depend on the validity or invalidity of the grant to Cowie. The sureties made themselves responsible for the due administration by Cowie of Edmund Craster-Craster's estate. He did act under the grant of letters of administration ; and the validity or invalidity of the grant cannot affect their liability. The liability of a surety is not always dependent on the validity of the contract with the principal debtor nor is it necessarily co-extensive with the liability of the latter. A contract may be void so far as the principal debtor is concerned as in the case of a contract with an infant in India or as in the case of fraud or coercion as between the creditor and the principal debtor but not the surety ; and the discharge of the surety is not a necessary consequence. . . .

If the liability of the sureties under an administration bond depended on the validity of the grant of letters of administration, the very object of demanding sureties would be frustrated. The object of demanding sureties is to prevent the evil consequences of malfeasance or misfeasance by an Administrator and to protect the interests of the persons really entitled to the assets of the deceased. The Administrator holds the estate for certain purposes and is responsible to the Court for his dealings. The Court in requiring a bond from the Administrator and his sureties contemplates not only the effect of maladministration but also the chances of the grant being subsequently declared either void or voidable. I am, therefore, of opinion that neither the invalidity of the grant nor the mistake of the Court in accepting the bond is sufficient to discharge the sureties.

RETIREMENT

On the occasion of his retirement from the High Court Bench on the 18th December 1908, the Senior Government Pleader presented him with an address on behalf of the Vakeels' Association in the course of which it was said :

In discharging the onerous duties of a Judge of the highest Court in the land, you have always evinced an earnest solicitude to impart substantial justice, and have fully realised the expectations of the public and of the profession. To us, the members of the profession of which you belong, your successful and brilliant career as a Judge has been a source of pride and gratification, and in common with the public, we realise in your retirement a heavy loss to the country.

Mr. Sinha, the then Advocate-General, who afterwards became Lord Sinha, paid him a compliment the highest that any judge can desire ; saying :

I think I voice the feelings of the profession when I say that when we appeared before you, Mr. Justice Mitra, with a good case, we were certain to win and equally if we appeared with a bad case we were bound to lose. That is the highest praise we can give a Judge of this Court.

Mr. Sarada Charan Mitra spent most of his time after retirement in his native village, but he occasionally came to Calcutta to take part in social and literary activities of the city. He continued as President of the *Bangiya Sahitya Parishad* and also of the *Sahitya Sabha*, of both of which he was President during the last four years of his judgeship. The comparative leisure of the six years' judgeship gave him more opportunities of engaging himself in literary work and in matters of social reform. His compulsory retirement under the sixty years' rule when in full possession of his physical and intellectual powers, enabled him to take even more active part in such work. He was honorary secretary of the Bethune College and played a considerable part in promoting the education of women ; he did considerable spade

work as a member of the Training College for women teachers just then proposed to be started. A notable paper of his in the field of historical research is the article on Omichand which for ever silenced the baseless accusations of Macaulay against Omichand in particular and the Bengalis in general. A series of articles appeared from his pen on the unification of the Indian scripts as a step towards the unification of the several Indian languages ; and as the Secretary of the *Eklipi Vistar Parishad* he did considerable work in furtherance of that scheme.

The great interest that Mr. Mitra took in matters of social reform has already been referred to. He set an example by giving his second son in marriage to a girl of a different sect of the Kayasthas community. He forcefully condemned by his speeches and writings in Bengali the evil system of the payment of money for the bridegroom ; and himself set an example to his fellow-Kayasthas by carrying his precepts into practice.

But the activities of Mr. Sarada Charan Mitra were not confined merely to literary and social matters. He wrote a series of articles on the development of the Bengal school of Hindu law for the English *Law Quarterly* ; as the *Calcutta Weekly Notes* pointed out, "With his strong personality, he soon established his prominence in whatever sphere of life he was called upon to work and his advice whether on matters of law or business was equally valued."

Mr. Sarada Charan Mitra was never in robust health ; but his regular habits and love of village life helped him to live to an age which in India at least is considered as a good old age. After his retirement he was not able to chalk out any definite scheme of activity beyond pursuing

his old favourite topics on literature and social reform and beyond helping the Bengalis with his valuable opinions on law and business matters. He died on the 4th September 1917, without completing the Biblical span of life of three score and ten, but during the nine years of retired life he was able to consolidate his work in the triple fields of law, literature and social reform.



THE RIGHT HON. SYED AMIR ALI

INTRODUCTION

DURING his long and eventful career, the Right Hon'ble Syed Amir Ali, P.C., occupied a unique position not only in the British Empire but all over the Moslem World. As a leader and representative of Indian Mahomedans for well-nigh half a century he was well known in England and India; as a Moslem jurist he had no equal; as an interpreter of Islamic history and belief, he was recognised on all hands as an authority; as a reconciler of Islam with modern progress and enlightenment, he perhaps stood without a rival; as a stout champion of pan-Islamic interests, he was known all the world over.

Amir Ali's life was a continuous record of strenuous effort for the regeneration of Moslem India. He was closely associated with Sir Syed Ahmed Khan, the Founder of the Mahomedan Anglo-Oriental College and the School of Indian Mahomedan Liberalism, in all the reform movements which originated at Aligarh some forty years ago. Like Sir Syed, he figured as an apostle of English education and one of the earliest advocates of education for Indian Moslem women, but unlike Sir Syed, he was a social reformer of an advanced type and had even gone so far as to contract "mixed marriage" which the Aligarh sage pronounced to be detrimental to the interests of the country. Like Sir Syed, he stood aloof from the Indian National Congress from the conviction that the

Moslem community "tied to the wheels of the Jugger-naut of majority, would be in the end crushed out of all semblance of nationality", but unlike Sir Syed, he was an ardent politician, taking the lead in all political movements affecting the Moslem weal. Like Sir Syed, he was a link between the East and the West, but unlike Sir Syed, he had purposely chosen the English language for communicating his thoughts and views to Moslems as well as to non-Moslems, for the reason that it is the language of culture and progress in the Modern World.

HIS FORBEARS

Amir Ali was born on April 6, 1849, at Chinsura—a quondam Dutch settlement—on the Hooghly in Bengal. He traced his descent, as all Syeds do, from Mahomed the Prophet through the Imam Ali-ar-Razza of Meshed. His forbears were in the employ of the Persian Kings. One of them, Mahomed Sadiq Khan, held high office under Shah Abbas II. From him descended Ahmad Fazil, a soldier by profession, who, with a body of troops, joined the army of Nadir Shah when the latter invaded India in 1739. After the departure of the Persian Monarch, Ahmad Fazil however chose to remain in India, taking service with his men under the Emperor of Delhi. When the Marathas sacked the Moghul capital, Ahmad Fazil's son fled from Delhi and took refuge in Oudh. Under the Nawab Viziers of Oudh, his sons rose to distinction and one of them, Saadat Ali, removed to Bengal shortly before the annexation of Oudh. To Saadat Ali was born the subject of our biography.

STUDIES AT THE HOOGHLY COLLEGE

Amir Ali's father was a far-seeing man. His was an age quite different from ours. The Moslems of India were weltering in ignorance, superstition and

bigotry. They turned a deaf ear to all things Western. They were so Mullah-ridden that they thought it a heresy to learn English. When such were the prevailing notions among "the faithful" in India, it argues a big heart for Saadat Ali Khan to depart from the stereotyped path and give his sons* an English education, facing the anathemas of myopic moulvies. Amir Ali was admitted into the Hooghly College which remained his *alma mater* throughout his academical career. He was a diligent student and was far ahead of his class fellows. He soon passed the Matriculation Examination, securing a first class scholarship. By unremitting industry he worked his way up, graduating in 1867. A year after, he took the M. A. degree in History and Political Economy. He then prosecuted his studies in Law in the same College, passing the B. L. Examination with honours. Amir Ali was one of those who have, during their academical career, received help from the "Moshin Fund", which has done so much to educate the Mahomedan youths of Bengal.

GOES TO ENGLAND TO STUDY FOR THE BAR

After passing the B. L. Examination, Mr. Amir Ali practised for some time in the Calcutta High Court, but very soon an opportunity was afforded him to give a finishing touch to his legal studies in England. He was elected as a State scholar by the Government of India. Mr. Amir Ali was one of the first Indian Mahomedans to study for the Bar. He joined the Inner Temple and was called to the Bar in 1873.

* Mr. Varis Ali, Mr. Amir Ali's elder brother, was also an *alumnus* of the Hooghly College where he was for some time Professor of Persian, before joining the Revenue Department as a Deputy Collector.

JOINS THE CALCUTTA BAR

Returning to India the same year, he again joined the Calcutta Bar and began to practise. He had, from the beginning, a large *clientèle* and his fame as a lawyer grew. In 1874, he was elected a Fellow of the Calcutta University. The next year he was appointed Lecturer on Mahomedan Law at the Presidency College, Calcutta. He held the lectureship for five successive years. From about this time can be traced his deep solicitude for the Mahomedan community which has never flagged since. He became immensely interested in Mahomedan *Anjumans* and associations. He founded, in 1876, the Central National Mahomedan Association and continued to be its Secretary for a quarter of a century. The association has done much for the amelioration of the Mahomedan community and as a proof thereof it may be remarked that, prior to Lord Minto's memorable reply to the Mahomedan deputation which waited on him at Simla, on 1st October 1906, the most important declaration of policy emanating from the head of the Indian Government in regard to the Moslems, was the notable resolution issued by Lord Dufferin on the memorial of the Central National Mahomedan Association of Calcutta. Mr. Amir Ali was also President of the Committee of the Hooghly Imambara, from 1876 to 1904.

HIS FIRST OFFICIAL CAREER

After five years of successful practice, he was selected, in 1878, to fill the post of Presidency Magistrate. So well did he discharge his duties that, in a very short time, he was appointed Officiating Chief Presidency Magistrate. He applied himself with zeal to the new work entrusted to him, winning alike the confidence of the public and the good will of the Government. But Mr. Amir Ali could not

remain long in Government service. It was difficult for a man who had lived in the bracing atmosphere of the Bar, to be cooped up in the official crib. The spirit of independence was slowly working within him, and he longed to be free. In 1881, when the air was thick with rumours of his being confirmed in the officiating incumbency, he resigned, in spite of the admonitions and friendly protests of his numerous friends and well-wishers. Although this action of his was then considered rash and short-sighted, it eventually bore good results.

REVERTS TO THE BAR

Mr. Amir Ali, after relinquishing the office of Chief Presidency Magistrate, once again joined the Bar. This time he wielded an unusually large and lucrative practice. The sphere of his activities also became widened. He rose in public esteem and in the eyes of the Government. He was first made a member of the Bengal Legislative Council which he continued to be till 1883. Immediately after, Lord Ripon nominated him to the Imperial Legislative Council to represent the interests of the Moslems whose cause he pleaded with impassioned eloquence. He took a prominent part in the debates of the Council. Those were the stormy days of the ill-fated Ilbert Bill. His strength of character and sincerity of purpose left a deep impression even on those who differed from him in views. Lord Dufferin in one of his speeches spoke very highly of his services. In 1884, he was appointed Tagore Law Professor. In recognition of his many services, he was awarded the title of C.I.E. in 1887.

AS JUDGE OF THE HIGH COURT

The year 1890 was a red-letter date in the life of Mr. Amir Ali. He was appointed to the then highest post in the gift of the Government open to natives of India,

barring of course the oligarchical Civil Service which imposes so many restrictions. His elevation to the Bench was received with universal approbation, and the Mahomedan community in particular felt themselves highly flattered at the nomination. Mr. Amir Ali was the second Mahomedan to be thus honoured, the first being Justice Syed Mahmood. For a man who possessed a sound legal knowledge, who had practised successfully in the Calcutta High Court, who had filled the posts of Presidency Magistrate and Chief Presidency Magistrate, who had sat in the Provincial and Imperial Legislative Councils, who had been Tagore Law Professor, it was not at all difficult to do full justice to the new responsibility entrusted to his care. Lord Lansdowne's selection was a happy one. Mr. Amir Ali possessed in a high degree all the qualifications and attributes that go to make a popular judge. Having passed through all the metamorphic stages of the Indian judiciary, he was in a position to sympathise both with the lawyer and the litigant. His keen sense of justice, his deep solicitude for the parties and his strict impartiality inspired confidence among the public. Even the worst political enemy of Mr. Amir Ali cannot but admit that, so far as judgments went, he was singularly free from bias and prejudice. His knowledge of Mahomedan Law was profound and of a rare order. His presence in the High Court helped to solve some of the knotty points of Mahomedan Law that confronted his brother judges.

Mr. Amir Ali's judgments give ample proof of his legal acumen, breadth of vision and close application. Even from a literary standpoint they occupy a high place. Chasteness of language, simplicity of style, lucidity and conciseness of expression, a rare command over the



RT. HON. SYED AMIR ALI

English idiom, characterise his judgments and the lay literary reader, too, will find them interesting reading.

On the occasion of his retirement *The Calcutta Weekly Notes* referred to his conduct as a Judge as "fair, impartial and independent," and added :

In Mahomedan cases, his deep knowledge of the laws and customs of his co-religionists made him an able if sometimes too technical an interpreter of the Moslem law.

His dissent in the Full Bench decision on the nature and character of a Mahomedan *wakf* though not accepted by the Privy Council, was approved by Mahomedan jurists as the right decision from the point of view of Mahomedan jurisprudence and it paved the way for the setting aight of the Moslem law by Mr. Jinnah's *Wakfs Validating Act* in 1913.

During the fourteen years of his career in the Calcutta High Court, he often presided over the Appellate side and occasionally did Original side work and Criminal work. His large experience in the decision of appeals covering the whole range of Civil and Criminal law, brought him considerable judicial experience in deciding cases, not only on Mahomedan law in which he was a specialist but also on Hindu law, on complicated land tenures and revenue law and on vexed question of evidence of interpretation of documents and of limitation. This wide experience enabled him to be of real help, later on, to the Judicial Committee of the Privy Council. As a High Court Judge, he was very particular about the wide powers vested in the High Court, and protested against the insidious attempts of the Indian Legislature to curb the powers conferred on it by the Charter and its Letters Patent. The cases of *Radha Krishna v. Gokula Nath* (5 C. W. N. 210) and

of *Sheikh Resant v. Courtney* (5 C. W. N. 211) may be referred to in this connection.

On the Criminal Bench also, Mr. Amir Ali "enjoyed a very good reputation", and sitting on the Original side, he set an example of patient hearing and of laborious sifting of evidence, and he endeavoured to do justice by arriving at the *asal hal* or 'the real truth' of the matter in the suits that came up for trial before him.

RETIRES AND SETTLES IN ENGLAND

After fourteen years of arduous service in the Bench of the Calcutta High Court, he retired in 1904. At the time of his retirement, it was thought that he would settle in India and give undivided attention to literary pursuits which it was not possible for him to do during his official career. But he rather chose to settle in England than in India. England had many attractions for him. It appealed to him as a land of liberty and the world's centre of learning and progress. It afforded him greater facilities and opportunities for his many-sided activities. It is puerile to suppose that he settled in England, simply because it was the land of his "better half". Yet it strikes us that the peculiar social disabilities under which English wives of Indians smart in the "Land of Regrets" must have weighed not a little with Mr. Amir Ali when the question of his future domicile was mooted. Nevertheless his love for India never waned. In fact it grew with the distance. He was chiefly known in English society as an indefatigable fighter for the cause of Indian Mahomedans and Indian liberalism.

HIS ENGLISH HOME

Avoiding the bustle and turmoil of London life, he had settled in a secluded corner of Berkshire and made the "Lambdens" his home, "Lambdens" which was

once the dower house of the lords of the manor of Utton, one of whom, Francis Perkins, married Arabella Fermor, the Belinda of Pope's *Rape of the Lock*. This historic house lies half-way between Theale and Aldermaston. It is very picturesquely situated on a gentle slope. In the North are the Ufton hills and on either side lie the Beenham and Englefield Parks. The house with its trellised verandah in the old "Indian style" is approached by a charming avenue of lime-trees, while a small lake below lends additional charm to the scenery around. The "Lambdens" contains a choice collection of art treasures from India and Arabia which Mrs. Amir Ali so assiduously collected while in India. Here Mr. Amir Ali gave up much of his leisure to study and literary work.

MR. AMIR ALI AND THE MOSLEM LEAGUE

Of the many-sided activities which engaged Mr. Amir Ali's attention since he made England his home, the work of the Moslem League claims the largest share. Ever since the inception of the London Branch of the Moslem League, of which he was President, he laboured week in and week out to emphasise the claims of the Indian Moslems on Lord Morley and the members of the India Council. The deference shown to the Moslem demands in the Reform Scheme of 1909, is in a large measure due to the untiring and unceasing advocacy of Mr. Amir Ali. No single Mahomedan has done so much as he to get the Indian Moslems adequate representation in the Reformed Councils.

MR. AMIR ALI AND THE INDIA OFFICE MEMBERSHIP

When the question of appointing the first Mahomedan member of the India Council was on the *tapis*, there was a universal belief that the Secretary of State's choice would fall on Mr. Amir Ali than whom no one was more eminently fitted. There were of course other members of the Moslem

community in India who had claims for consideration, but Mr. Amir Ali stood head and shoulders above them. Besides being a conspicuous reformer and a learned exponent of present-day Islam, he had the hall-mark of a leader of proved capacity, while his choice of an English domicile and familiarity with London social and political life peculiarly fitted him to interpret India to England. Lord Morley himself had many opportunities of gauging Mr. Amir Ali's qualifications as a leading member of all the Moslem League deputations that interviewed him and as one who was privately consulted by him on the question of efficient representation of Mahomedans in the Reforms. In spite of all this Lord Morley's choice fell elsewhere, causing, of course, some disappointment among the Indian Moslem community.

A PRIVY COUNCILLOR

The feeling of disappointment at his not being appointed member of the India Council was changed into one of unbounded joy when, on November 23, 1909, it was announced that Mr. Amir Ali was sworn into the Privy Council. Mr. Amir Ali was the first Indian to enter the precincts of His Majesty the King's Council. All India was highly gratified at the appointment. It was viewed in the light of a national honour and not as a case of "preferential treatment" accorded to a member of the Moslem community. This was the first occasion in the history of English polity when an Indian was invited by the King of England "to take his seat at the Board", and sworn "to advise the King according to the best of his cunning and discretion; to advise for the King's honour and the good of the public, without partiality; through affection, love, need, doubt or dread, to keep the King's counsel secret; to avoid corruption; to

help and strengthen the execution of what shall be resolved: and generally to observe, keep and do all that a true counsellor should do to his Sovereign Lord". Mr. Amir Ali was sworn in with a view to his being appointed to the "Judicial Committee" which, according to the Statute of 3 and 4 William IV C. 41, is the highest Court of Appeal for all the Overseas Dominions of His Majesty. Indian legal knowledge and judicial experience have, from the first, been represented on the Privy Council, but the appointments were exclusively from the *cadre* of retired English Judges of Indian High Courts. The need for direct Indian representation has been acknowledged by eminent English jurists. The inclusion of an Indian Judge of Mr. Amir Ali's judicial experience had been proved to be a tower of strength to the Judicial Committee, as was shown by the decisions of the Privy Council.

Writing on the occasion of his death, the *Calcutta Weekly Notes* remarked :

During the last nineteen years he has discharged the highly responsible and arduous duties of the highest Court of Indian Appeal with a devotion and ability for which he has deserved the gratitude of his countrymen and no less praise and appreciation from the State.

He has during this period settled many a vexed question of Mahomedan law, of religious trusts, marriage, divorce and succession. His contributions to the judicial development of the Hindu law of different schools have not been inconsiderable. His legal contributions covered a wide range, extending from the interpretation of the abstract propositions of the codified law of evidence in India to the highly complicated and puzzling problems of revenue and tenancy law of Bengal.

And the English weekly *The Law Journal* on the same occasion referred to his work in these terms :

He retired in 1904 and coming to this country he was, in 1909, appointed to be a member of the Judicial Committee where he was joined afterwards by Lord Sinha; and Mr. Amir Ali contributed his full share to the work of the Committee. Under the existing

arrangements, as to appeals from the Dominions, that work consists mainly of Indian appeals, and the Committee has been fortunate in having these eminent Indian jurists associated with it.

INDIAN COURTS AND FOREIGN JUDGMENTS

Before considering some of the important decisions in which he took the leading part of delivering judgments, it is well to remember that he was responsible to wean away Indian lawyers from the pedantic practice of citing foreign decisions in the course of their arguments. In the case of *Imambandi vs. Mutsaddi*, delivering the judgment of the Judicial Committee of the Privy Council, he said :

Their Lordships cannot help deprecating the practice which seems to be growing in some of the Indian Courts of referring largely to foreign decisions. However useful in the scientific study of comparative jurisprudence, reference to judgments of foreign Courts, to which Indian practitioners cannot be expected to have access, based often on considerations and conditions totally differing from those applicable to or prevailing in India, is only likely to confuse the administration of justice.

This decision has had a salutary effect in helping the Courts to exclude the citation of foreign judgments from their purview.

SOME IMPORTANT DECISIONS

In the same case, he defined the powers of an unauthorised guardian in *Sunni* law :

The father alone, or if he be dead, his executor (under the *Sunni* law) is the legal guardian. If the father dies without appointing an executor and his father is alive, the guardianship of his minor children devolves on their grandfather. Should he also be dead, and have left an executor it vests in him. In default of these *de jure* guardians, the duty of appointing a guardian for the protection and preservation of the infant's property devolves on the judge as the representative of the sovereign. No one else has any right or power to intermeddle with the property of a minor, except for certain specific purposes, the nature of which is clearly defined. When the mother is the father's executrix or is appointed by the Judge as guardian of the minors, she has all the powers of a *de jure* guardian. Without such derivative authority, if she assumes charge of their property of whatever description and purports to deal with it, she does so at her own risk, and her acts are like those of any other person who arrogates an

authority which he does not legally possess. She may incur responsibilities but can impose no obligations on the infant. This rule however is subject to certain exceptions provided for the protection of a minor child who has no *de jure* guardian.

Discussing the value of the 'Hedaya' and the 'Fatwai Alamgari', he says :

Hamilton's 'Hedaya' and Baillie's 'Digest' were pointed out as valuable works on Mahomedan Law. Following them, he held that acknowledgment by a Moslem as legitimate children raised a presumption that he was lawfully married to their mother.

He was responsible for some notable judgments, not only in the Mahomedan law of religious trusts but in the Hindu law also. In *Ismail-Iriff vs. Ahmed*, he said :

The Mussalman law, like the English law, draws a wide distinction between public and private trusts. Generally speaking, in the case of a waqf or trust created for specific individuals or a determined body of individuals, the *Kazi* whose place in the British Indian system is taken by the Civil Court, has in carrying the trust into execution to give effect so far as possible to the expressed wishes of the founder. With respect however to public, religious or charitable trusts, of which a public mosque is a common and well known example, the *Kazi's* discretion is very wide. He may not depart from the intentions of the founder or from any rule fixed by him as to the objects of the benefaction; but as regards management which must be governed by circumstances, he has complete discretion. He may defer to the wishes of the founder so far as they are conformable to changed conditions and circumstances, but his primary duty is to consider the interests of the general body of the public for whose benefit the trust is created.

In *Vidya Vanithi Thirtha vs. Balusivam*, he traced the origin of trusts in Mahomedan law :

The Mahomedan law relating to trusts owes its origin to a rule laid down by the Prophet of Islam; and means "the tying up of property in the ownership of God the Almighty and the devotion of the profits for the benefit of human beings."

A person holding properties generally for Mahomedan religious purposes is not to be treated as a "trustee".

Under the Mahomedan law, when once it is declared that a particular property is *wakf* or any such expression is used as implies wakf, or the tenor of the document shows that a dedication to pious or charitable purposes is meant, the right of the wakf is extinguished and the ownership is transferred to the Almighty.

The manager of a wakf is the *mutawalli*, the governor, superintendent or curator or "procurator". In the Mahomedan system

no property is "conveyed" to a mutawalli in the case of a dedication. Nor is any property vested in him; whatever property he holds for the idol or the institution, he holds as manager with certain beneficial interests regulated by custom and usage. Under the Mahomedan law, the moment a wakf is created, all rights of property pass out of the wakif and rest in God Almighty; the curator whether called mutawalli or sujjadanashim or by any other name is merely a manager.

In the same judgment, he explained elaborately the Hindu law of religious endowments and said :

Under the Hindu law, the image of a deity of the Hindu pantheon is a "juristic entity" vested with the capacity of receiving gifts and holding property.

In many cases in Southern India especially where the diffusion of Aryan Brahminism was essential for bringing the Dravidian peoples under the religious rule of the Hindu system, colleges and monasteries under the names of Mutt were founded under spiritual teachers of recognised sanctity. These men had and have ample discretion in the application of the funds of the institution but always subject to certain obligations and duties, equally governed by custom and usage.

And in the course of the judgment he pointed out the dangers of the method of importing foreign legal ideas by way of analogy in these words :

There are two systems of law in force in India, both self-contained, and both wholly independent of each other and wholly independent of foreign and outside legal conceptions. In each, there are well-recognized rules relating to their religious and charitable institutions. From the year 1774, the Legislature, British and Indian, has affirmed time after time the absolute enjoyment of their laws and customs, so far as they are not in conflict with the statutory laws, by Hindus and Mahomedans. It would be a serious inroad into their rights if the rules of the Hindu and Mahomedan laws were to be construed with the light of legal conceptions borrowed from abroad, unless perhaps where they are absolutely, so to speak, *in pari materia*. The vice of this method of construction by analogy is well illustrated in the case of I.L.R. 27, M. 435, where a Mahant's position was attempted to be explained by comparing it with that of a Bishop or a beneficed clergyman in England under the Ecclesiastical Law.

His long experience as a Judge of the Calcutta High Court made him familiar with the intricacies of the Hindu law. In *Hitendra Singh vs. Rameshwar Singh*, he said :

As they understand the Mithila law, a simple and pure gift by the husband to the wife does not convey to her absolute ownership. She takes it only for her life without any right of alienation unless power of alienation is expressly conferred upon her.

And then he proceeded rightly to lay down the limitations of this special rule of law :

The limitation imposed by the Mithila law, which declares that gifts by husbands will only convey a life interest to the wife, applies exclusively to pure simple gifts and not to a gift for consideration such as in the present case.

Other notable decisions of his are : (1) *Dharmaraj vs. Soni Bai* (A.I.R. 1925 P.C. 118) where the peculiarities of adoption among the Agarwallas who are Jains, are pointed out. (2) *Bibi Akhtari Begum vs. Diljan Ali* (A.I.R. 1923 P.C. 11) where the results of an exclusion of an heir from inheritance are examined under the Shiah school of Moslem law. (3) *Vibhundapriya Thirtha Swamiar vs. Lakshmindra* (A.I.R. 1927 P.C. 131) where the borrowings of the head of a Mutt for feeding on special occasions all pilgrims and worshippers at his Mutt were held proper and a receiver was pointed to manage the properties of the Mutt and pay such debts to the creditors. (4) *Vedachela Mudaliar vs. Ranganathan Chettiar* (A.I.R. 1922 P.C. 33) where he explained the principles of the law of Bandhu succession elaborately, and authoritatively approving of and adopting the exposition of the law by Muthuswami Iyer, J., in an early Madras case and (5) *Kunwar Sardar Singh vs. Kunj Bihari Lal* in which the powers of a Hindu widow to confer spiritual benefit on her deceased husband and to alienate property left by him to meet the expenses of religious ceremonies intended for his benefit are considered at length and (6) *Mahatab Singh vs. Badan Singh* in which he explained the nature of *abuabs* in these words :

It has been in ancient times customary almost throughout India for the superior holder of the soil, whether he was a

feudal "baron" or principal fiscal officer appointed by Government, to levy certain dues. In Bengal, these dues or cesses were called *abwabs*; in the Central Provinces and the Bombay Presidency, "huq" an Arabic word meaning "dues" or "right". Akbar appears to have reduced the capricious levy of these "dues" and regulated the system. These dues were made part of the emolument attached to the office, and as the office became hereditary, the representative of the family who took up the office, took it with the obligation of using the prerequisites for the maintenance of the family, the old Zemindars were placed in the same position.

AMIR ALI'S LIBERALISM

Although he did not support the Congress movement he was at no time a pronounced partisan. He was ever a stout champion of liberalism. He had always advocated catholicity of views. His advocacy of Female Education in India dates from the time when many Hindus themselves were backward educationally. He did much for the uplift of "the submerged half" of India. He believed that the regeneration of India rests with women and as such their education should in no case be neglected. He held that the Purdah system obtaining among the Indian Moslems is a drag and should be abolished. Whether every Moslem concurred with him or not, he was entitled to a hearing as he advanced his views with an energy and persistence all his own. There was a freshness about his arguments which was always engaging.

INDIAN FIRST AND MOSLEM NEXT

Mr. Amir Ali was an Indian first and a Moslem afterwards. Who could have pleaded the cause of the Indians better or portrayed the inner sentiment of India in truer perspective? He wrote:

Seventy years of English education and the gradual diffusion of Western knowledge have created among the more prosperous classes a perception of the responsibilities and obligations of Government and awakened in them a sense of their rights. How-

ever difficult this may make the work of administration, it is hardly possible even if it were expedient, to alter the current of progress. The great intellectual uprise among the educated sections due to the impact of West and East naturally rest on the masses. And the spirit of collectivism and organisation which has given birth to so many political and semi-political institutions exercises its legitimate influence. The whole continent, with the exception perhaps of tracts inhabited by backward communities is thus in a state of expectation eager for development.

He ridiculed the British conception of India as "an easy-going country, run on fixed, generally unalterable lines--the land of pageants and the home of durbars--the bulk of whose people, untouched by the changes in the conception of the thinking classes occasioned by the contact of two civilisations—one old and stationary, the other young, active and utilitarian—bow down before the British official as an *avatar* of progress and prosperity". He deplored the lack of sympathy between the rulers and the ruled. The official atmosphere, he said, remained "charged with preconceived theories of racial inequality and the unwisdom of relaxing the bonds of tutelage, whilst the elder statesmen view with ill-concealed apprehension any change in the direction of liberalisation". The Indian masses, he warned, were no longer the apathetic people they once were, as they have given ample proof of discussing questions often with intelligence, always with acuteness.

As an educated Indian, Mr. Amir Ali advocated a wider application of the principles of local self-government, the employment of Indians in the higher posts of State service, and the admission of Indians to higher ranks of the Indian Army. He held that Indians are not new to local self-government as is shown by the old village administration which, in a modified form, still largely governs the destinies of the rural classes. In regard to the official allegation that Indians bungle even at municipal govern-

ment and have therefore no aptitude for local self-government, he observed :

Municipal government, even in England, is attended with mistakes, in India they are to be expected. A sympathetic, tactful and at the same time firm treatment would, instead of making failure, have led to success. It would have made respectable sections understand the responsibilities of trust, imparted self-reliance and trained them to a large perception of duty as citizens of a great Empire.

INDIANS IN THE SERVICES

Regarding the employment of Indians to the higher branches of State service, it might be said that since Mr. Amir Ali made these remarks, a new policy has dawned in India. The Minto-Morley regime saw the breaking up of the race barrier, and Indians are now being slowly admitted into the sanctums of the Indian Executive Councils, both Imperial and Provincial, and the India Office, although it is patent that, for a very long time to come, the official element will be overwhelmingly Anglo-Indian.

As regards the admission of Indians to the higher ranks of the Indian army, Mr. Amir Ali was equally outspoken. He denounces the official view that they are unable to command obedience or exact deference. He urged that "in every country the amount of respect shown to an officer depends upon the consideration in which he is held by his superiors, for the people take him at Government valuation". He remarked that the closing of the Indian Army as a profession to the sons of respectable Indians has not only proved a source of considerable discontent but is slowly emasculating the virile races of India. The present policy, he added, "instead of making their military predilections a source of strength, is driving them into unworthy and unhealthy, not to say, dangerous channels".



SIR ROMESH CHUNDER MITTER

INDIA AND ENGLISH PARTIES

Speaking of the English Party system and the attitude of either party towards India and Indian questions, Mr. Amir Ali shrewdly observed :

We in India often lose sight of the fact that generally speaking both the great English Parties treat Indian questions as outside the range of what are usually called party-politics ; and although exceptions have recently appeared, on the whole it may be said the rule is faithfully observed. Both parties profess to have at heart the development of India on progressive lines and the training of her people in the work of self-government, so that in the distant future when the growth of a true spirit of compromise and toleration among all classes and communities may make it possible to entrust them with the management of their own affairs, she may justly claim a release from her present (not irksome) tutelage. One party may be more inclined to hurry the pace, the other may feel it wiser to proceed more cautiously ; whatever the difference in the method, both seem to have the same end in view.

THE MONTAGU REFORMS

Mr. Amir Ali was decisively enthusiastic over the Montagu scheme. When, in July 1918, the Report of the Montagu-Chelmsford Scheme was published, he warmly praised the Secretary of State and the Viceroy for their courage and statesmanship and commended the new Reforms to his countrymen for acceptance. Speaking at a luncheon given by the London Moslem League to the Indian representatives, on July 17 of that year, he said : " How soon the full position of the vast scheme framed by far-seeing statesmen would be realised depends upon the sobriety of judgment and spirit of toleration and compromise which the first pioneers brought to the task."

SEPARATE MOSLEM REPRESENTATION

Having outlined Mr. Amir Ali's views in general, we shall next set forth his plea for separate Moslem representation. Mr. Amir Ali's contention was that India not being a homogeneous country, every caste and creed has to watch over its own interests. The development

of each community, he urged, must proceed on its own ideals and standards of thought and training. A community, "with great traditions", consisting of sixty-two millions and forming one-fifth of the population of India, cannot be ignored in the governance of the country. Hitherto the Indian Moslems were suffering acutely from political inanition. The Moslem, while he was patted on the back for holding aloof from "political agitation" and told to apply himself like a good boy to his books, was relegated to the cold shade of neglect. To safeguard against further decline and disintegration, Mr. Amir Ali urged that there must be concerted action. He advanced that, in the absence of a recognised organisation capable of expressing freely and openly the sentiments and opinions of the Moslems as a body, the feelings of the masses are likely to take a wrong shape and find an outlet through unregulated channels. The system of representation obtaining in the various Councils was, until the passing of the Reform Act of 1909, very inadequate. This was due as much to the narrowness of vision on the part of the administrators as to their own individualism and lack of political training. Hence Mr. Amir Ali's solicitude for an organisation or league which would safeguard Moslem rights and interests in a form that would give them an assured position in the political institutions of the country. Asked as to why the Moslems should not join hands with the Hindus in the political evolution of the country and thus exonerate themselves from the charge of creating an Ulster in India, Mr. Amir Ali remarked that "any attempt at amalgamation at the present stage would mean the submergence of an ill-organised, badly equipped and badly trained minority under a majority vastly superior in numbers and immensely

better organised. No one acquainted with the social, religious and moral conditions of the Moslems can view such a contingency without the gravest misgivings".

NO SEPARATIST

Yet Mr. Amir Ali was no "separatist". He believed that the development of India on modern lines depends upon the cordial co-operation of the two great Indian communities, Hindu and Moslem, in the work of national welfare. He exhorted his community to work in unity and harmony. He wrote :

I trust that the two communities, whom the constitutional experiment (referring to the Reforms of 1909) mainly affects will work together in harmony and concord to make it a success. By bringing the representatives of the two peoples into the Council chambers and on the public platforms on fairly assured terms, it will, I venture to hope, lead to the growth of that spirit of compromise and mutual toleration on which depends the ultimate success of the reforms, and without which the welfare and progress of the country will be in jeopardy.

If such were his views in 1909, they suffered no change ten years hence. For, in a letter to the *Times* in December 1918, he held that the success of the Montford Scheme would be seriously prejudiced if any attempt towards disturbance in principle of Mussalman communal representation was made. Such an action, he said, would create Mahomedan distrust both in the pledges of the Government and the Hindu leaders. "Unity of sentiment and consciousness of identity of interest which, in due course, will remove the necessity for special representation is clearly developing at the top and if details are rightly handled, it should not take long before it reaches the bottom."

AS AN AUTHOR

No biographical sketch of Mr. Amir Ali would be complete without a reference to his works which are all in

English. His maiden literary effort seems to have been a translation of an Urdu (?) pamphlet by Moulvi Syed Karamat Ali, the mutavalli (treasurer) of the Bengal Mohsin Fund whose patronage he enjoyed during his College career. Although written before he left College, it gives abundant proof of his early mastery over the English language. While still reading for the Bar in London, he wrote "A Critical Examination of the Life and Teachings of Mahomed" which was given a warm reception in England and introduced him into the literary circles of London. His most popular work is the "Spirit of Islam" which has passed through several and special editions. On this was built Mr. Amir Ali's fame as an author. Therein he has entered fully into the spirit of the religion of Mahomed. No better exposition of the teachings of the Arabian Prophet has yet appeared in the English language. It is a classic in its line. Mr. Amir Ali is also the author of "The Ethics of Islam" which deals in his usual masterly way with the precepts of Islam. For Constable's "Religions: Ancient and Modern" Series, Mr. Amir Ali also contributed a shilling volume entitled *Islam* which presents in an admirably small compass the salient features of Mahomed's Faith. His love for Islam further led him to fill a gap in Islamic history and write "A Short History of the Saracens" which has thrown a flood of light on the annals of a forgotten empire to which European savants too have done scant justice. The author had taken infinite pains to study, in minute detail, the inner life and the social, economic and intellectual development of the Saracenic race, and trace and show how much modern Europe is indebted to their civilisation. His historical analogies are bold, original and instructive. The comparison of the Saracenic administration with the

British Rule in India is full of lessons for the Imperialist.

ISLAM

Mr. Amir Ali's expositions of the religion of Islam are characterized by a studied effort on his part to remove some of the misapprehensions and prejudices regarding the true aims and ideals of Islam and portray the religion of Mahomed in true perspective. He lifts the veil of formalism and ceremonialism and lets us see the "spirit" of Islam. Below are given a few extracts from his works which illustrate his method of elucidation.

Dwelling on the universality and rationalistic practicality of Islam, Mr. Amir Ali remarks :

In some religions the precepts which inculcated duties have been so utterly devoid of practicability, so completely wanting in a knowledge of human nature, and partaking so much of the dreamy vagueness of enthusiasts as to become in the real battles of life simply useless. The practical character of a religion, its abiding influence on the common relations of mankind, in the affairs of every-day life, its power on the masses, are the true criteria for judging of its universality. We do not look to exceptional minds to recognise the nature of a religion. We search among the masses to understand its true character. Does it exercise deep power over them? Does it elevate them? Does it regulate their conception of rights and duties? Does it, if carried to the South Sea Islander, or preached to the Cafrarians, improve or degrade them?—are the questions we naturally ask. In Islam is joined a lofty idealism with the most rationalistic practicality. It did not ignore human nature; it never entangled itself in the tortuous pathways which lie outside the domains of the actual and the real. Its object, like that of other systems, was the elevation of humanity towards the absolute ideal of perfection; but it attalued, or tries to attain, this object by grasping the truth that the nature of man is, in this existence, imperfect. If it did not say, "If thy brother smite thee on one cheek, turn thou the other also to him;" if it allowed the punishment of the wanton wrong-doer to the extent of the injury he had done, it also taught, in fervid words and varied strains, the practice of forgiveness and benevolence, and the return of good for evil.

It is not a mere creed, it is a life to be lived in the present—a religion of right-doing, right-thinking and right-speaking, founded on divine love, universal charity and equality of man in the sight of the Lord. However much the modern professors of Islam

may have dimmed the glory of their master (and a volume might also be written on the defects of modern Mahomedanism), the religion which enshrines righteousness and justification by work deserves the recognition of the lovers of humanity.

Commenting on the absence of priesthood in Islam, Mr. Amir Ali says :

The absence of a specially interested class to act as intermediaries between God and man differentiates Islam from all other creeds. In the Islamic system every man is his own priest and pleads for himself for forgiveness and mercy. No sacrifice, no ceremonial invented by vested interests is needed to bring the anxious heart nearer to its Comforter.

Essentially a democratic creed, it recognises no distinction of race or colour among its followers. High or low, rich or poor, white, yellow or black are on the same level in the sight of their Lord. The democratic character of its appeal, its repudiation of all adventitious barriers of caste, explain the powerful fascination it exercises over diverse races of mankind.

Refuting the popular charge laid at the door of Islam that it is an aggressive religion and does not allow religious toleration to non-Moslems, Mr. Amir Ali pleads as follows :

By the laws of Islam, liberty of conscience and freedom of worship were allowed and guaranteed to the followers of every other creed under Moslem dominion. The passage in the Koran, "Let there be no compulsion in religion" testifies to the principle of toleration and charity inculcated by Islam. "What, wilt thou force men to believe when belief can come only from God?" "Adhere to those who forsake you; speak truth to your own heart; do good to every one that does ill to you"—these are the precepts of a Teacher who has been accused of fanaticism and intolerance. Let it be remembered that these are the utterances not of a powerless enthusiast or philosophical dreamer paralysed by the weight of opposing forces. These are the utterances of a man in the plenitude of his power, of the head of a sufficiently strong and well-organised State, able to enforce his doctrines with the edge of his reputed sword.

The essence of the political character of Islam is to be found in the charter which was granted to the Jews by the Prophet after his arrival in Medina and the notable message sent to the Christians of Najran and the neighbouring territories after Islam had fully established itself in the Peninsula. This latter document has, for the most part, furnished the guiding principle to all Moslem rulers in their mode of dealing with their non-Moslem subjects, and if they have departed from it in any instance the cause is to be found in the character of the particular sovereign. If we separate the

political necessity which has often spoken and acted in the name of religion, no faith is more tolerant than Islam to the followers of other creeds. "Reasons of State" have led a sovereign here and there to display a certain degree of intolerance or to insist upon a certain uniformity of faith; but the system itself has ever maintained the most complete tolerance. Christians and Jews, as a rule, have never been molested in the exercise of their religion, or constrained to change their faith. If they are required to pay a special tax, it is in lieu of military service, and it is but right that those who enjoy the protection of the State should contribute in some shape to the public burdens. Towards the idolators there was greater strictness in theory, but in practice the law was equally liberal. If at any time they were treated with harshness, the cause is to be found in the passions of the ruler or the population. The religious element was used only as a pretext.

MOSLEM LAW OF MARRIAGE

Mr. Amir Ali's lucid exposition of the Moslem law of marriage and the Koranic provision for polygamy in certain conditions and stages of society is interesting, although he himself looks upon polygamy in the present day as an adulterous connection and contrary to the spirit of Islam. He proves by cogent reasoning that the status of women in Islam is as good as and in some respects better than that of many European women. He says:

A Moslem marriage is a civil act, needing no priest, requiring no ceremonial. The contract of marriage gives the man no power over the woman's person, beyond what the law defines, and none whatever upon her goods and property. Her rights as a mother do not depend for their recognition upon the idiosyncrasies of individual judges. Her earnings acquired by her own exertions cannot be wasted by a prodigal husband, nor can she be ill-treated with impunity by one who is brutal. She acts, if *sui juris*, in all matters which relate to herself and her property in her own individual right, without the intervention of husband or father. She can sue her debtors in the open court, without the necessity of joining a next friend, or under cover of her husband's name. She continues to exercise after she has passed from her father's house into her husband's home, all the rights which the law gives to men. All the privileges which belong to her as a woman and a wife are secured to her, not by the courtesies which 'come and go' but by the actual text in the Book of Law. Taken as a whole, her status is not more unfavourable than that of many European women, whilst in many respects she occupies a decidedly better position.

CHARACTER OF MAHOMED

Lastly, we cannot refrain from quoting *in extenso* Mr. Amir Ali's impartial estimate of Mahomed's character:

The humble preacher had risen to be the ruler of Arabia, the equal of Chosroes and of Caesar, the arbiter of the destinies of a nation. But the same humility of spirit, the same nobility of soul and purity of heart, austerity of conduct, refinement and delicacy of feeling, and stern devotion to duty which had won him the title of *al-Amin*, combined with a severe sense of self-examination, are ever the distinguishing traits of his character. Once in his life, whilst engaged in a religious conversation with an influential citizen of Mecca, he had turned away from a humble blind seeker of the truth. He is always recurring to this incident with remorse and proclaiming God's disapprobation. A nature so pure, so tender and yet so heroic, inspires not only reverence, but love. And naturally the Arabian writers dwell with the proudest satisfaction on the graces and intellectual gifts of the son of Abdulla. His courtesy to the great, his affability to the humble and his dignified bearing to the presumptuous, procured him universal respect and admiration. His countenance reflected the benevolence of his heart. Profoundly read in the volume of nature, though ignorant of letters, with an expansive mind, elevated by deep communion with the soul of the universe, he was gifted with the power of influencing equally the learned and the unlearned. Withal, there was a majesty in his face, an air of genius which inspired all who came in contact with him with a feeling of veneration and love.

His singular elevation of mind, his extreme delicacy and refinement of feeling, his purity and truth, form the constant theme of the traditions. He was most indulgent to his inferiors, and would never allow his awkward little page to be scolded whatever he did. "Ten years," said Anas, his servant, "was I about the Prophet, and he never said so much as 'Uff' to me." He was very affectionate towards his family. One of his boys died on his breast in the smoky house of the nurse, a blacksmith's wife. He was very fond of children. He would stop them in the streets, and pat their little cheeks. He never struck any one in his life. The worst expression he ever made use of in conversation was, "What has come to him? May his forehead be darkened with mud!" When asked to curse some one, he replied, "I have not been sent to curse, but to be a mercy to mankind."

He visited the sick, followed every bier he met, accepted the invitation of a slave to dinner, mended his own clothes, milked his goats, and waited upon himself, relates summarily another tradition. He never first withdrew his hand out of another's palm, and turned not before the other had turned.

His hand was the most generous, his breast the most courageous his tongue the most truthful; he was the most faithful protector of those he protected; the sweetest and most agreeable in conversation; those who saw him were suddenly filled with reverence; those who came near him loved him, they who described him would say, "I have never seen his like, either before or after." He was of great taciturnity; and when he spoke, he spoke with emphasis and deliberation, and no one could ever forget what he said.

Mahomed was extremely simple in his habits. His mode of life, his dress and his furniture retained to the very last a character of patriarchal simplicity. Many a time, Abu Huraira reports, had the Prophet to go without a meal. Dates and water frequently formed his only nourishment. Often, for months together, no fire could be lighted in his house from scantiness of means. God, say the Moslem historians, had indeed put before him the key to the treasures of this world, but he refused it!

HIS LEGAL WORKS

Mr. Amir Ali wrote several works on Law which combine in themselves the excellent features of a text-book and a book of reference containing up-to-date case-law, and as such they are indispensable to every legal practitioner in India. They are marked by sound scholarship, great ability, lucid exposition and careful arrangement. His "Student's Hand-book of Mahomedan Law" is a text book in almost all Indian Universities. His monumental work on "Mahomedan Law" (2 Vols.) is a standard book of reference. He has also written "The Personal Law of the Mahomedans." He is the joint-author of "The Law of Evidence applicable to the British India". "A Commentary on the Bengal Tenancy Act" and "Civil Procedure in British India." He also published an Indian Edition of "Ashburner's Mortgages" which illustrates, amplifies and explains the text from the Indian point of view.

AS A CONTRIBUTOR TO ENGLISH PERIODICALS

Mr. Amir Ali was a frequent contributor to English periodicals. He wrote pretty often to the *Nineteenth*

Century and After and other leading reviews. He was regarded in England as a sound authority on the varying phases of Indian life and sentiment. He was a thoughtful and outspoken writer and, if his trenchant remarks sometimes evoked criticism in official and other circles, they nevertheless influenced the policy of Government. His writings have had a powerful effect in moulding Indian as well as Anglo-Indian thought. He was engaged in the last years of his life in writing a history of the development of Mahomedan civilisation in India.

HIS SERVICES TO ISLAM AND ISLAMIC COUNTRIES

Mr. Amir Ali's services are not confined to India. They extend to other Islamic countries. It may not be generally known that, while the Turkish Revolution of 1908 was brewing, Mr. Amir Ali convinced the Shaikh-ul-Islam by theological arguments, that the young Turk movement was not irreligious and opposed to Islam with the result that the highest ecclesiastical dignitary of Turkey gave the Revolution the sanction of the Faith, thus gagging the mouths of the fanatic Mullahs. But for the intervention of Mr. Amir Ali, the Shaikh-ul-Islam would not have been won over and the work of the Revolution would not have been accomplished so easily.* Mr. Amir Ali was also connected with Red Crescent work during the Turko-Italian and Turko-Balkan Wars. He organised the British Red Crescent Society and sent field hospitals to the front for the relief of the sick and wounded. He sent weekly large sums of money to relieve the homeless and foodless refugees. He appealed for funds to the humanity of the people of Great Britain, India and the British Colonies and invoked the assistance of his co-religio-

* See Knight's "Awakening of Turkey", p. 67.

nists all over the world to start Red Crescent Societies of their own to alleviate the sufferings of the afflicted population of Turkey. Writing to the *Times*, he deplored the use which was made of the symbol of Christianity by partisans in England to justify aggression and slaughter in the Balkans, pointing out the incalculable mischief done in England and India by ecclesiastical and newspaper effusions against the Turkish Government. Mr. Amir Ali was also a friend of Persia. When M. Sazonoff, the Russian Foreign Minister, visited London and there was a talk about the partition of Persia, Mr. Amir Ali came to its aid and wrote a strong letter of protest to the *Times*. In it he argued as follows:

If the matter of Persia's inability to govern herself, may I be permitted to ask the British public if a fair or honest chance has been allowed to that poor harried country, to recover from the effects of the grinding tyranny of her late ruler or to her distracted people to prove their capacity for government? I venture to affirm, without hesitation, that every effort on their part has been paralysed by outside action. The tribes do not know who governs them and the people themselves feel they are being crushed by a fate against which they cannot contend.

The pressure for squeezing out the national life of Persia and preventing her regeneration has been relentless, unceasing and persistent. It is cruel, under these circumstances, to expect any country or any people to show any capacity for government. Had Persia been allowed even for five years a fair chance to govern herself and had then failed, we would have been willing to accept the correctness, if not the justice, of your (*The Times*) argument.

THE WAR AND TURKEY

But it was Turkey's entanglement in the Great War that absorbed Mr. Amir Ali's whole time, energy and service. Since the beginning of Armageddon in the fateful August 1914, Mr. Amir Ali had thrown the weight of his commanding influence on the side of the Allies. His heart was touched at the plight of Belgium. The country devastated, her ancient seats of learning

desolated, her people driven from their homes for refuge in distant lands,—these in his own words “made the heart throb with infinite sorrow and pain”. His allegiance to England was not merely steadfast but joyous. But soon the failure of allied diplomacy in winning Turkey to their side, or even keeping her neutral, threw a baleful shadow over the whole Moslem world. Mr. Amir Ali, and H. H. the Aga Khan, like other leading Indian Mahomedans, endeavoured their best to prevent Turkey from committing what they deemed a wanton suicide. They reproached Turkey for her thoughtlessness alike to her own advantage and to her disregard of the sentiments of millions of Mahomedans owning allegiance to British or French rule, whose position their action was tending to compromise. Moslems in allied countries were loyal to their respective governments, but they were sorely tried as their heart could not be easily reconciled to the overthrow of Turkey and the destruction of the Khilafat which the allies were alleged to have contemplated. So during the War, while they stood firm in their allegiance to the allies they were ceaselessly working to wean Turkey from the tragic consequences of her own miscalculation. Of those who served Turkey and the Islamic world in this great crisis a high place should be given to Mr. Amir Ali.

INDIAN MOSLEMS' MEMORIAL

For at the peace table British statesmen, flushed with victory, seem to have forgotten their pledges to Indian Moslems. Mr. Lloyd George himself declared in a speech so often quoted against him: “Nor are we fighting to deprive Turkey of its capital or of the rich and renowned lands of Asia Minor and Thrace which are predominantly Turkish in race.” And yet it was Mr. Lloyd George who, in spite of the efforts of

Mr. Montagu, Lord Sinha and the Maharaja of Bikaner, stood up for vengeance against Turkey and for partitioning her rich and historic possession. On June 14, 1919, Indian Moslems in London, under the lead of Mr. Amir Ali, H. H. The Aga Khan and Sir Abbas Ali Baig, addressed a Memorial to the Prime Minister in which they pointed out :

We venture to appeal to you for the sake of the fair name of Great Britain and the tranquil development of Asia, that Turkey proper and Thrace with Constantinople as its capital should be left intact and uninterfered with under the sovereignty of the Sultan, that his temporal power over the Turkish State should not be attempted to be reduced or diminished by any sort of mandate and that the principle of self-determination which has been applied to the Christian peoples of Europe should be made applicable to the Moslem peoples, and that in the interests of the peaceful development of Western Asia, the suzerainty of the Caliph over the non-Turkish provinces of the Ottoman Empire be left undisturbed.

Subsequently in a letter to the *Times*, Mr. Amir Ali and H. H. The Aga Khan wrote of the attempted dismemberment of the Turkish home-lands thus :

It would, in our opinion, be a cruel act of injustice to wrench any portion of this tract from Turkish sovereignty to satisfy the ambitions of any other people. Instead of bringing peace to Western Asia, such a settlement will sow the seeds of constant wars, the effect of which cannot be expected to remain confined to the country where they happen to be waged. * * *

We submit that the maintenance of the Ottoman sovereign's spiritual suzerainty in those countries, whilst maintaining his prestige and thus conciliating Mussulman feeling, would be the means of making the position of the Mussulman rulers or governors of those countries unimpugnable. But so far as Thrace, Constantinople, and the home-lands of the Turkish race are concerned, Mussulman feeling from top to bottom is absolutely opposed to any interference under any shape with the Sultan's sovereignty.

Thus through the efforts mainly of Mr. Amir Ali and his colleagues, an agitation was kept up in England in favour of Turkey against which a campaign of hatred and calumny was not uncommon in the British press. It is true indeed that it was the strong arm of Mustapha Kemal that secured final victory to Turkey, but there is no doubt also

that the propagandist work done in London on her behalf arrested an earlier and possibly tragic settlement of Turkish claims. Who will deny that if the settlement had been made earlier, the Turks would not have had breathing time to equip themselves for the final fray? The victory of Mustapha and the re-conquering of lost territories brought the balm to the bruised spirits of Mr. Amir Ali and his Moslem colleagues—as indeed to all interested in Turkey's welfare.

TURKEY AND THE KHILAFAT

But no sooner had victory been secured to Turkey than Angora began to look askance at the Khilafat itself which had inspired such a universal hegemony of hearts. It was the Khilafat which acted as the one unifying force of Islam. Moslems in East and West, in far away South Africa or Mongolia, looked to Constantinople as the centre of light. Indian Moslems, while owning loyalty to an English King, still looked to the Khalifa as their spiritual head and devoted themselves to save the Khilafat from fall. But the Young Turks of Angora, when they found themselves supreme in their State, lost no time in dismissing the gentle and noble Abdul Majid from his historic throne. The heart of the Muslim world was wrung with pity and remorse. Muslims in India, as elsewhere, who had exhibited such unbounded admiration for Kemal were dumbfounded. Their respectful and urgent pleadings to save the Khilafat were disregarded. Even their appeal for correct news was unheeded. Mr. Amir Ali wrote indignant to the press :

The arrogation by a Muslim State to "abolish" any of the fundamental institutions of Islam is a grave tragedy—the gravest within the last seven centuries. It means the disruption of Islamic unity and the disintegration of the Faith as a moral force. It also means that the particular State, in its desire to

bring itself into line with the new republics of Europe, forfeits its primacy among Muslim nations and places itself on the same level as the Balkan States.

The Caliphate is not a national institution, the property of any single State to be "abolished" at its free will. It is an *integra* part of the Sunni system. Any nation is free to abandon Islam, but no nation or State can arrogate to itself the power to alter or abolish its institutions so as to affect other Muslim communities.

Holding these views, Mr. Amir Ali could not sleep over the catastrophic step that Angora had taken. Mr. Amir Ali and H. H. Aga Khan in a joint letter to Ismet Pasha

invited the attention of the Grand National Assembly to a subject which is unquestionably of interest and concern to the whole Sunni communion. They affirmed that the present position of the Caliph Imam is disturbing the vast populations who belong to it and that the diminution in the dignity and prestige of the Caliph are lessening the weight and influence of Islam. They disclaimed any intention to suggest that the powers of the Assembly should be lessened, but they urged that "the religious headship of the Sunni world should be maintained intact in accordance with the 'Shariyyet'" [the sacred law of Islam]. To them the Caliph-Imam symbolizes the unity of the Sunni communion. The Vicegerent of the Prophet is the Imam of the Sunni congregations; he and the faithful are knit together by a mystical element which cannot be eradicated from the Moslem mind without creating discord in the world of Islam.

The publication of this joint letter in Constantinople, before it reached Angora, threw the Government into a rage and the three editors who published it were ordered to be arrested and tried for treason by an emergency tribunal. The writers were pained at the extraordinary attitude taken up by Angora, and they explained their position in a letter to the *Times* :

We recognise the signal services which Kemal Pasha rendered to the country, but the uncertainty surrounding the position of the Caliph being likely to cause disintegration of Islam, we thought that we might bring the matter to the notice of the Turkish Assembly and urge that the Caliph's dignity might be placed on an assured position in order to maintain his prestige and command the confidence and esteem of the Sunni world. We have not the slightest desire to hamper the established Government of Turkey.

Such counsel coming from two consistent friends of Turkey should not have been so misconstrued. We personally greatly resent the imputations.

A PAN-ISLAMIC FIGURE

Mr. Amir Ali was throughout his life an indefatigable advocate of Islam. Whenever the interests of an Islamic State are in jeopardy, or any gross injustice was done to it, he was the first to uphold the cause of the wronged country. He used both the press and platform for the expression of his views and did it successfully. Mahomedan India was really proud to have in London, the world's news-disseminating centre, a son who was ever ready to champion the cause of Islam.

But Mr. Amir Ali almost wore himself out by his indefatigable labours during the last years of his life. He was the centre of a Pan-Islamic controversy, the most momentous in history, but he lived to see the emergence of new Turkey and the awakening of Muslims in more than one country. But he had passed the Psalmist's three score years and ten, and his strength was failing fast. Amir Ali died an octogenarian in August 1928, and in his death passed away a great Indian and the Grand Old Man of Islam. Almost to the end, Amir Ali evinced the keenest solicitude for the welfare of Muslims in India and abroad. He was in politics a communalist, but he commanded more general confidence and esteem as author and jurist than as politician. His legal and literary works constitute an enduring memorial to his learning as a lawyer and as an historian of Islamic culture. He will also be remembered in after times as the first Indian to enter the precincts of His Majesty's Privy Council and to be appointed to the Judicial Committee—the highest judicial authority in the Empire.

Mr. Amir Ali left behind him, at the time of his death, his English widow and two sons; the elder Mr. T. Amir Ali is the Standing Counsel to the Government of Bengal. The younger one is a Member of the Indian Civil Service in the United Provinces.



KASHINATH TRIMBAK TELANG

TELANG was born on August 30th, 1850. He belonged to a middle-class Hindu family. His family was one of the twelve Saraswat families that had left their native home in Goa early in the last century, to seek their fortune in the busy and commercially growing city of Bombay. His father and mother were quite uneducated as we understand education now. But they were characterized by mother wit, were pious and frugal, with noble traditions of respectability and steady virtue behind them. His mother was gentle and amiable. These traits of a sweet and amiable disposition, Telang shared in no small degree.

AT SCHOOL AND COLLEGE

It was early in life that Telang was sent to school to learn his vernacular. Even at that early age he seems to have been very studious. He finished his vernacular studies in due course winning prizes from the Deputy Educational Inspector, Rao Saheb Vishwanath Narayan Mandlik, with whom in later life he was destined to rub shoulders on a common platform. He was sent to learn English at the Elphinstone School at the tender age of nine. The headmaster of the school was one W. H. Smith and below him was the late Ardesir Framjee Moos. In the school it was not enough for him to learn his daily lessons. He supplemented them by additional reading to

be able to give satisfactory answers to his teachers on all the general questions that arose out of the lessons prescribed. That method of study once acquired remained with him through life, and he was never unprepared for anything. He was never hardpressed for time at the time of the examination. It is said that frequently he was found playing chess on the verandah of a neighbour's house even on days immediately preceding the examination. In the Middle School, he won a prize in English in 1861, and he was selected on the occasion of the prize distribution to recite the poem on the death of Sir John Moore. He won another prize in 1862. It was at this time that his attention was drawn towards Marathi poetry, and to be able to appreciate its spirit he began the study of Sanskrit under a Shastri. His fellow-student was the famous linguist and the first Indian Civilian, Shripad Babaji Thakore. He was now promoted to the Matriculation class where his fellow-students were Jamsetji Ardesir Dalal, Gajanan Krishna Bhatvadekar, Rao Saheb Tullo, Thakore, and Nadkarni. All of them rose to distinction in their respective walks of life.

In his secondary course, Mr. Telang proved himself an apt pupil, with a special bias for languages. His tutors marked him out as a promising lad, took special care to cultivate his tastes, not however at the sacrifice of subjects absolutely needed for the University Examination. Under the able guidance of the late N. M. Parmanand, his proficiency in Mathematics was so marked that he secured a prize in that subject and in English in 1863. He passed the Matriculation in 1864 with Sanskrit for his second language. At this time he got from his principal as a prize Max Muller's History of Sanskrit Literature. It was also during this period that he became

an ardent student of Marathi poetry, the love for which he retained through life. Mr. Telang was known in after life to be a brilliant conversationalist. He would quote often from his favourite English poets. This trait of his manifested itself also at this time in connection with Marathi poetry, the choicest couplets of which he would quote on occasions to the delight of his friends and teachers. Mr. Telang passed his Matriculation at the age of fourteen. While at college he showed the same diligence and passion for general reading that marked him out at school. He won the junior scholarship in 1865 and senior scholarship in April 1866, passed his F.A. in December, won another scholarship in 1867, secured the Raja of Dhar Prize and Ganpatrao Vithal prize in English.

At seventeen, he took his B.A. degree, at nineteen, he passed the M.A. examination in languages. Six months later he obtained the Bhagwandass scholarship in Sanskrit which then meant a separate and a severer test than at present. The same year he passed his LL.B. examination. Three years later he passed the Advocate's examination. Thus at twenty-two he qualified himself for the legal profession. From seventeen to twenty-two he was a fellow at his college. It was during this period that he formed the habit of strenuous application and laid the foundation of that accurate, deep and extensive knowledge which made him the versatile scholar that he was known to be.

CHARACTERISTICS

We have brought down the narrative of Mr. Telang's life to the end of his college career. Before we pass on to his professional career, it would not be amiss to dwell for a short space on some of his remarkable characteristics.



KASHINATH TRIMBAK TELANG

There was nothing in Telang's immediate surroundings calculated at an early age to create an atmosphere of high thoughts impelling to lofty endeavour. There were no traditions of learning established in the family. It was instinct and nature that supplied the moral motive power. English education was then a valuable passport to material prosperity and to a position of eminence, and perhaps ambition, "that last infirmity of noble minds" had its share in reinforcing the proclivities of the precocious youth. His, again, was a surer aim. To the ideal that he formed early in life, he stuck with tenacity, strenuousness and self-possession remarkable for his age. There was nothing of drift about his doings. The goal to be attained was deliberately fixed and all his energy was bent upon accomplishing it. He was elected for the profession of an Advocate and he stuck to his resolution inspite of an offer of the Headmastership of a High School on a salary of Rs. 300 made to him by Mr. Peile, the then Director of Public Instruction. Mr. Peile in pressing the offer said that any graduate at Oxford would willingly accept in England the salary of Rs. 300 to start with. Mr. Telang refused. He wanted to follow in the footsteps of Ranade and Bal Maugesh Wagle who had preceded him at the Bar. Mr. Jamsetji A. Dalal remarks on this: "Perhaps there was *afflatus divinus* within him of his future career as an advocate, orator and leader of men." The same "deliberate purpose and timely preparation" characterized Mr. Telang's action throughout life.

Early in life, again, he had resolved to throw himself whole-heartedly into the public life of his country.

In those days educated men being few and far between, could be easily picked out. Friendships were

formed and common ideals evolved naturally out of the exchange of ideas. Mutual action and reaction kept them steady in the routine of public life. The University men formed a band inspired by common aims, a luminous centre attracting all of common sympathy, because sympathy could not be expected in the encircling darkness. Men like Dadabhai Nowroji, Nowroji Furdoonji, Sorabji Shapurjee Bengali, Dr. Bhaoji Dajee, Sir Mangaldass Nathubhai had already chalked out a path for others to follow and young aspirants readily followed. A youth of brilliant parts like Mr. Telang readily fell into the way of his predecessors and soon attained a conspicuous position. With the self-knowledge that he possessed, he set himself unflinchingly to the task of equipping himself for the responsibility that he was determined to take upon himself.

Mr. Telang applied himself to the training of his mind with all the zest and pertinacity of a young enthusiast. He was always thorough and painstaking. It was a rule with him never to commit himself to a question before he had bestowed laborious thought upon, and matured his views about it. Discipline of the mind was what he prized most. He trained his mind as a machine for sifting facts and grasping truths, by a well planned course of study undertaken immediately after his graduation. He passed his B.A. [at the age of seventeen. While he was reading for his M.A. degree, he studied for a few months Geometry and Trigonometry once again, to steady his mind and acquire the habit of concentration. He next took up "Chillingworth's Religion of the Protestants" for study, carefully reproducing in his own language the argument of the book and analysing its thought. The next work to be taken up for perusal was Plato's Dialogues in Jowett's translation. He then turned to Strauss's "Criticism of

the Bible" and studied it with the same laborious process of summarising and analysis. He next took up the study of the Bhagwadgita and in order to catch its spirit, he translated it into English verse. This effort at translation strengthened his mastery of English style. From the Bhagwadgita he turned to Shankar Bhashya which he studied very critically. The study of Shankar Bhashya unsettled his faith in forms and dogma and gave a rationalistic bent to his mind. All this he accomplished before he passed his M.A. during the course of two years.

SUCCESS AT THE BAR

We have seen what mental and moral habits became ingrained in him as the result of the healthy atmosphere in the home and at College. Let us now turn to his life in his profession as a lawyer and a judge.

The profession of law was not then so overcrowded as it is now. Mr. Telang belonged to the second generation of graduates turned out by the University. Men of far inferior calibre who took to that profession then had made their piles. Imagine then what a golden harvest was ready for the reaping to one who had far better qualifications in point of special study and a wider field in which to exercise his professional talents than is open to ordinary L.L.B's—not to speak of his transcendent gifts and the strenuous discipline by which he had drilled them for use. At the same time another fact ought not to be ignored. Mr. Telang, compared with his European rivals, was only an inexperienced youth. Men like Mr. Latham, Sir Andrew Scoble, Seargent Atkinson and others then monopolised the practice at the Bar. The European element had a greater preponderance then than at present and was also more ably represented. The only Indian advocates that had preceded him were Bal Mangesh Wagle and Ranade. Wagle was

the only practising Hindu advocate. Ranade had taken up a Government post. Mehta and Tyabji were struggling forward in the profession like himself. In the seventies of the last century native solicitors also were few and far between. For a struggling young Indian to make his mark in rivalry with a formidable array of experienced European barristers, it was even then an uphill work, howsoever intelligent he may have been.

In six months' time, it became plain to all that Telang was marked for success. As Sir Raymond West puts it, in virtue of that sympathetic faculty which Telang possessed in quite an unusual degree, he almost at once acquired the English tone of the bar and moved morally and dialectically on a platform absolutely the same as that of his learned friends from Europe. His politeness, his courtesy, his capacity to take pains, his attractive delivery, his power of close reasoning and above all his humility won for him the heart of his colleagues. Sir Raymond West remarks that there was at times an oversubtlety in his argumentation. At times he was wrong or far less cautious in choosing his major premises but it was all fair play, and whenever Telang insisted upon any point, there was sure to be some solid reason at the back of it. He would argue tenaciously and reply with good humour to all the contentions raised by the Court, but he never heckled. Whenever he saw that his contention stood on a weak basis, he gave over. Hence the Judges always gave him a respectful hearing, considering that they were safe in his hands. There was no attempt to mislead the Court.

Mr. Telang had not the brusque overpowering readiness of the master of debate and hence cross-examination was not his strong point. But in the marshalling of

facts, in the clear statement of relevant issues, in the interpretation of texts and logically arguing from them to the conclusion, he was equal to any other competent rival. He presented his case with an engaging candour which won the confidence of the Bench. Mr. Telang had in him all the qualities of a jurist. His arguments soon drew the attention of the Court upon him and Judges began to compliment him openly from the Bench. Sir Michael Westropp, the then Chief Justice, more than once referred to him in terms of marked approbation both in the open Court and in his judgments. This naturally caught the attention of the public. His assiduity, his passion for excellence, his sense of duty, kept him steadily on the level which he had attained by his brilliance. Many a man is apt to dwindle down or be intoxicated with the fumes of his own praise. But Telang knew more than anyone else that it is even harder to keep to the height once attained than to attain to it. Success at an age when people have to serve a long apprenticeship in obscure toil and under severe drawbacks, did not spoil him. The more fortune smiled upon him, the more keenly was he awakened to his own responsibility. Thus at the age of 39 he attained that far shining eminence that was a marvel to all. At that age when judgeship was offered to him, he accepted it because he thought it would afford him rest and seclusion to carry on his literary pursuits. From the money point of view it was a distinct loss to him. But we are anticipating. As has been remarked, Telang kept on steadily rising in the profession. It was, however, his argument in the famous Mankuvarbai case in 1876 that brought him into prominent notice. The Chief Justice was so much fascinated by it that it was for a long time a favourite topic of conversation

with him. From that time his rise was doubly assured and the road to professional eminence became perfectly smooth. It was a case of Hindu law and the spirit of modernization which characterised his later attitude towards it that became first evident in that case.

Though Mr. Telang's knowledge in all branches of law was thorough-going and deep, in Hindu law he towered head and shoulders above others. His Sanskrit scholarship helped him there immensely. He knew the genius of Hindu law as no one else knew it in his time except perhaps Mr. Mandlik. He was also deep read in the literature and philosophy of the Hindus and knew well their ancient history from first-hand sources. His critical acumen was of the finest. Hence he interpreted the text of the *Mitakshara* and the *Mayukha* in their proper spirit. Sir Raymond West says: "It was refreshing sometimes to hear him arguing for modernisation while on the other side an English advocate, to whom the whole Hindu system must have seemed more or less grotesque, contended for the most rigorous construction of some antique rule." Mr. Telang's sympathies were broad and cultured. They were enlisted on the side of progress. He knew as being one of themselves what hardships some of the Hindu customs inflicted upon the followers of the Hindu Dharma Shastra. He felt very strongly that in Hindu law, as elsewhere, life implies growth and adaptation. He argued that if custom had fixed the Hindu law, custom may as well ameliorate it. He had sanction for such a modification in the attitude of the authors of the different *Smritis*. The various commentaries and glosses with which they tided over the difficulties of their own times, furnished the strongest argument for elasticity in the application and interpretation of the texts. The translations of those who

could not possibly catch the spirit of the whole, being themselves alien, were misleading.

He therefore argued from the original texts and argued as an authoritative scholar on knotty points. That was another distinction for him. Mr. Telang, before he became a distinguished lawyer, had already acquired reputation as an antiquarian scholar by his two essays on the *Ramayana* and the *Bhagwadgita* in which he sought to refute the theories of Weber and Lorringer. His essays before the Students' Literary and Scientific Society on *Shankaracharya* and other kindred subjects were in the same line. That gave him a precedence over his other colleagues in the matter of Hindu law. Besides, his was a rational turn of mind. There was no quibbling or sophistry about his interpretations. These were always broad-minded. They never erred on the side of narrowness. They were for bringing the law into line with modern needs and complexities of modern Hindu social life. He knew where custom pinched the most. He strove to remove the hindrance, if it could be logically removed by the interpretation of the text according to the sanction of the different original *Nibandha-karas*. His judgments on Hindu law as a judge and his pleadings as a lawyer are an attempt in that line. The modern liberal tradition of interpretation that obtains in the Bombay High Court was initiated by him and is being maintained by his successors who are as much imbued with the spirit of true reform as himself.

ON THE BENCH

Mr. Telang worked as a Judge for a little short of four years, for nearly a year of which he was incapacitated for real work. It is to be regretted that he had not many opportunities during the space of three years to render very remarkable services in the evolution of

Hindu law as was expected. However, the few opportunities he had, he utilised best and helped to clear up the law of succession to Stridhan property. He also made clear the distinction between the Mitakshara and the Mayukha in the matter. He laid down intelligible and sound canons for finding out the heirs to Stridhan, and these canons have stood the test of time.

There was a case in his time referred to the Full Bench, wherein the question was whether a son could claim partition of the ancestral estate contrary to the wishes of his father who was desirous of living with his brothers. Mr. Telang's judgment on this question differed from that of his other colleagues. It brings out clearly his strong points. He was in favour of allowing the son's claim to prevail. The judgment is a monument of Sanskrit scholarship and research and shows his analytic faculties at their best. It reveals a sound grasp of original texts though it ignores the practical side of it and the conservative instincts of the people. The other Judges upheld the right of the joint family as approved by society. The customary law was entirely in favour of the Joint family system and was for upholding the patriarchal type of it. The Joint family system could not stand with the progress of time and the development of individualism. So separate rights in the collateral members were recognized, and the recognition was extended to the son who was allowed to claim the partition from the father against his wishes when separate from his brothers and uncles. But society does not allow the son to disrespect his father's wishes and force on him separation when in union with his brothers. His son's claim to partition in this circumstance was always disapproved and discouraged. Telang ignored this aspect and tried to push the Shastraic rule in favour of the son.

The following sentence from his judgment sums up his attitude on Hindu law :

It seems to me obviously more safe and logical as it is more in accordance with the Hindu methods of interpretation in the case of such works as the Mitakshara to gather together the principles which can be collected with reasonable certainty and accept whatever conclusions can be logically deduced from those principles, unless such conclusions are found to be opposed to other well established principles or of course to any proved custom. This is the only procedure that in my opinion can be legitimately adopted unless indeed we are prepared to hold that the Hindu law is a mere tarrago of arbitrary rules and not a coherent system based on logical grounds.

THE RIGHTS OF WOMEN

Perhaps the case that made most noise during the time that he was practising as an advocate was that of Dadaji vs. Rakhamabai. In that case Telang was the counsel for Rakhamabai. In that case he pleaded for the cause of female emancipation. He asked the Court to annihilate the husband's right to restitution by refusing to apply the remedy of the English Court for enforcing the right in case of refusal by the wife on the simple ground that the Hindu law contained no remedy for the enforcement of the right by imprisonment of the wife in case of refusal. Such a decision would, he said, remedy the evils of early marriage wherein the wife has no choice and can be married to anybody who may afterwards turn out to be a wretch. Mr. Telang's attitude created at the time much consternation in the Hindu society, as it was regarded as an incitement to young women to refuse intercourse with their husbands if they regarded them as unsuitable after they had attained years of discretion.

We have quoted these two specific instances at somewhat great length to bring home to the readers the spirit of his attitude towards Hindu law.

Both as a lawyer and a judge, he helped a great deal to formulate aright the canons of Hindu law, and it is to be regretted that a man of such parts and such special knowledge should have been cut off too soon to leave behind a monumental work on the subject. No one was better fitted for the undertaking both by his Sanskrit scholarship, his broad general culture and, above all, his literary gift of luminous treatment.

But Telang, as Sir Raymond West has said, never allowed the scholar, the educationist, the public man to be submerged in the lawyer, and it is to his public life that we must now turn to derive instruction and help for our own guidance. That is what matters most to the lay mind.

SOCIAL REFORM

Telang's opinions on social reform may be best gathered from his two lectures in Marathi delivered before the Hindu Union Club—a club by the way which he founded to bring about harmonious relations between the different sections of the Hindu community by affording the members of different castes scope for meeting on a common platform to exchange views, to mix in social intercourse and to contribute by their combined efforts to build up the social, moral and literary life of the future. These lectures are :

1. The relative importance of *shastra* and custom.
2. Compromise in social matters.

There are two other writings which also give us an insight into his standpoint, his reply to Mr. Malabari's notes on "Infant Marriage and Enforced Widowhood", and his much discussed as also much misunderstood lecture delivered before the Students' Literary and Scientific Society on "Must social reform precede political reform"? His brief address as the President of the Indian Social Confer-

ence, as also his lecture on Western Education in the Bombay Presidency, delivered before the Elphinstonian Social Gathering in 1890, as well as his reply to the letter of an enthusiastic reformer, Mr. Y. N. Ranade, afford additional glimpses and perhaps his ripest as certainly his most final conclusions on the same topic. The energetic campaign he carried on in 1891 against the partisans of orthodoxy in the Age of Consent controversy, who had raised the cry of religion in danger and who wanted to taboo State interference, shows his fervour, insight and his wise and manly attitude. Earlier in the year 1886, when a meeting was held in the Madhav Baug under the presidentship of Mr. Mandlik, to send a petition to the Viceroy protesting strongly against Mr. Malabari's "meddlesome attitude" in regard to Hindu social questions and his urgent demand for State interference, Mr. Telang attended the meeting to propose an amendment to the effect that the Hindu community was alive to its own shortcomings and would try to reform social institution from within and that therefore the State need not interfere. That amendment was not allowed. Later on he insisted in the Age of Consent Bill controversy that the State had every right to interfere for the sake of justice and humanity even if the Shastras were against the proposed measure. When the opponents raised the cry that State interference in social matters was against the pledge given in the Proclamation of 1858, he took a still higher ground and said that no person had a right to renounce his duty and that this distinction between the renunciation of right and the desertion of duty required to be maintained as between a sovereign and a subject even more strongly than between an ordinary man and man. Furthermore, it was the duty of the sovereign to protect his subjects from unjust harm.

This is in truth the sovereign's paramount duty—the common ground on which the champions of meddlesome State interference must join hands with Manu on the one side and with Humboldt and Herbert Spencer on the other.

The prime function of the State is to secure life. Neither Queen Victoria nor any other sovereign has the power of saying directly or indirectly: "We shall not protect our subjects from unjust harm."

There was ample evidence to show that unjust harm, aye, fatal harm, was occasionally done to the child wives by the husband's prematurely claiming to exercise the so-called marital rights upon their person. And therefore the pledge, even if given, cannot be obligatory in such cases.

Mr. Telang further showed that the Queen's declaration was levelled at religious persecution properly so called and at similar proceedings in exercise of irresponsible or unrestrained power. It had manifestly no bearing whatever on proceedings based on extra spiritual and practical considerations.

"Can it be said, that the equal and impartial protection of the law is enjoyed by all when a girl can be ravished by her husband with impunity even before she becomes *apta viri* ?

"The construction which men like Sir Romesh Chandra Mitter put on the Proclamation must logically end," he argued, "in their association upon this question with the Begum of Oude, who in her counterblast on the Queen's Proclamation said among other things: 'To eat pigs and drink wine, to bite greased cartridges and to mix pig's fat with flour, sweetmeat, to send clergymen into the streets and alleys to preach the Christian religion, to multiply English schools and pay people a monthly stipend for learning the English sciences, while the places of worship of Hindus and Mussalmans are to this day entirely neglected. With all this how can the people believe that religion will not be interfered with?' 'Consequences are the beacons of wise men,' says Professor Huxley. We may ask Sir R. C. Mitter and those who argue like him whether they think that good government and progress of the people may be ever expected to come if the British Government accepts as authoritative their construction of the Queen's Proclamation? That construction must logically involve, for instance, the shutting up of the Schools and Colleges, where a system of Astronomy is taught that must knock on the head the absurdities of the Hindu Jyotish which forms an integral part of their ritual of marriage. It must also involve a

condemnation of all police regulation of Hindu and Musulman processions, for is not that clearly an interference with religious worship ? Yet in the first case you dry up absolutely the fountains of all progress, in the second case, you destroy the *Pax Britannica* which is the necessary condition of all progress."

He wound up the discussion on the cry of religion in danger with the following warning to the Government:

If, where the claims of humanity are implicated, the British Government is to hold its hand and put forward a plea of *non possumus*, it will write itself down as unworthy of its best traditions and will announce a principle of action that, if logically carried out, will destroy the possibility of any solid good resulting from its presence in India.

Mr. Telang's contributions on the "Age of Consent" controversy form very stimulating reading. They reveal his learning, his critical acumen, his power of interpretation, and the dignity, moderation and fair play with which he carried on the fight for what he considered the cause of truth, humanity and justice.

That Mr. Telang was won over to the side of State legislation in social matters is clearly shown by his attitude in the Age of Consent controversy, even as his intellectual master, Herbert Spener, gave his reluctant sanction to Mr. Malabari's proposal as we read in Mr. Karkaria's book. Telang felt the hopelessness of the reformer's efforts unless he was backed up by the State. "The liberty of man consisted in being forced to find out the right path and to walk thereon."

Mr. Telang was the greatest champion of the woman's cause. He looked forward to female education as the most effective agency for bringing about a desirable change in social matters. In his note to Mr. Malabari he writes : "It is to the spread of education of our girls, not to the limitation of University honours, or official loaves and fishes to certain classes of our boys that I am inclined to look for

the remedies of existing evils. That indicates my view as regards social reforms generally." Our slaves are our masters in the house. Try to educate them, give them light, and light in the possession of woman will turn into lightning, and all pernicious traditions, degrading customs, evil influences in the household that prevent the growth of a healthy atmosphere, will fall of a heap into ashes at the touch of that spark. He was certainly not for anglicising the Indian household but he wanted to turn it into neat, orderly, and an enlightened home, enamoured of purity and holiness where the personality of the woman and the man was not stunted by rigid and irrational restrictions, and where the current of spiritual energy flowed freely as the result of the contact of mind with mind and heart with heart in free fellowship and mutual sympathy and love. Education will teach woman her duties better. A free participation in the aspirations and ideals of the husband would forge a bond firmer than mere unconscious submission. Woman is at the present day a racek and lowly thing if not quite a chattel. Raise her and you raise the manhood of the nation. That was the way he argued. "It would be rash," he said on one occasion, "to deny her the light of Western culture which had borne so much good in your case. It would not do to confine her merely to the reading of the Puranas. Let her read them by all means but with trained intelligence, with a discerning eye and not mechanically as she is wont to do at present. Let home influences be the purest. Give her perfect freedom to exercise her reason and develop her personality. Do not stultify her, else you stultify yourself. Raise the age limit of marriage. That will ensure full physical growth and give them time to learn more. The husband and wife grown up, will understand each other better. There will be

mutual reverence and love, and posterity will benefit by it. That was the standpoint he took with regard to women's rights and duties. Female education he regarded as the crux of the whole question of social reform. Towards widow re-marriage, his attitude was of the heartiest sympathy. He believed that as the age limit in the marriage of girls would rise, the question of widow re-marriage would press less and less. He was for meeting the orthodox half way in this matter. He first insisted on the marriage of virgin widows, pressing on all the while for the realisation of the whole programme. He found in the *Shastras* if not a direct yet an indirect sanction for widow re-marriage, and in the Epics a full sanction in the episodes like that of *Damayanti* which he has quoted in one of his Marathi lectures. He admitted that it was a lower ideal, yet taking into consideration the average human being with all the helplessness, economic pressure and temptation to which such a human being is exposed, that ideal must find its full support from the society. The widow who re-marries, if not supported, should at least come under no social bar. A re-married widow was as honourable a woman as any other if there was no fault to find with her in matters of social discipline, that is, if she lived a pure, holy and quiet life of a true householder.

Mr. Telang's reverence for the past was born of deep and first-hand knowledge. He was not an obscurantist. He strove hard to spread right notions by speeches, writings and essays. He enjoined upon the educated men the need of thinking out every problem for themselves, of tracing it to its very source and of forming deliberate opinions, so that when time for action comes they may not be swayed hither and thither by the shifting gusts of opinion.

In the matter of reform his motto was hasten slowly
In his note to Mr. Malabari, he said :

We must work as ardently as if our efforts were to be crowned with success at once. But, on the other hand, we must be content to take the fruits as they come in the fulness of time and not be despondent or impatient if the customs which have stood for centuries do not at once fall of a heap at the blast of our trumpet.

In his last address he said : "It was the duty of every one to understand and appreciate the past and selecting all that was possible from it, apply it to the altered circumstance of to-day. All this was to be done with moderation, wisdom and right direction." His message may be summed up in the words of Justice Ranade :

The true reformer has not to write upon a clean slate. His work is more often to complete the half written sentence. We cannot break with the past altogether. For it is a rich inheritance and we have no reason to be ashamed of it. But while respecting the past, we must ever seek to correct the parasitical growths that have encrusted it.

LITERARY WORK

We are now turning to perhaps the most inward phase of Mr. Telang's life, the work which he cherished most and to which he would fain have devoted all his energies if circumstances had so shaped his career.

Telang's literary work may be divided under three heads: 1. The books he translated or annotated. 2. The various essays on antiquarian topics contributed either to the Journal of the Bombay Branch of the Royal Asiatic Society or to the *Indian Antiquary*. 3. And his miscellaneous essays on varied topics read either before the Students' Literary and Scientific Society, of which he was for many years the Secretary, or before the Hindu Union Club. The purpose of the last was to give an incentive and stimulus to correct thinking on the topics of the day.

Telang believed in what may be termed the import and export of knowledge. "His own wide knowledge was continually transmuted into virtue—an active desire and power to lead others into the path of enlightenment and reason, to support them until they should become self-supporting and in their turn leaders of men, helpers and friends of mankind." To the natural wealth of his intellectual gifts, he was able to add an invaluable store of European ideas, knowledge and principles. The light thus vouchsafed he always utilised "not merely to stare on" as he puts it in one of his addresses but "to discover onward things more remote from our knowledge".

We cannot do more than barely chronicle the many papers he contributed to the Bombay Branch of the Royal Asiatic Society's Journal and to the *Indian Antiquary*. It was, after finishing his studies and qualifying for the profession, that he turned his attention to "antiquarian work and the work of making researches into the history of India, and the development of Indian thought". It was in 1872 that the *Indian Antiquary* was started by Dr. Burgess. Its first volume contained two essays by Telang, one is on the "Date of Nyayakusumanjali" and another is a short note pointing out "that however right Dr. Rajendralal Mitra might be in holding that there was a time in historic memory when the ancestors of the Hindus ate beef freely, that time came to an end sometime before Christ". In the same volume appeared Rev. Boyd's translation of Weber's paper in which the latter had set himself to shaking the tradition of the extreme antiquity of the *Ramayana*. Weber sought to show that "the great Hindu Epic really dates from the third or the fourth century A.D., and that it contains clear internal evidence of an acquaintance with the Homeric *Saga-cycle*". Telang answered the arguments of

Weber in an essay called "Was the Ramayana copied from Homer"?

The publication of this in a pamphlet form gave Telang a place of acknowledged prominence amongst Sanskrit scholars. The essay was subsequently published in the pamphlet form and was highly praised by the academy.

The essay refuting the contentions of Dr. Weber was read in 1873. Early in 1870 he had read a paper before the Students' Literary and Scientific Society on the life of Shaukaracharya. The same year he contributed a criticism on Dr. Kielhorn's "Sanskrit Grammar" to the columns of the *Native Opinion*. In 1871, he had read an essay before the Students' Society on *Muktikopanishad*. The essay on Ramayana has already been noted. The same year he wrote an essay on the Date of Shri Harsha for the *Indian Antiquary*.

In 1874, he read a paper before the Students' Literary Society contesting the theory of Lorringer as regards the Bhagwadgita, that it was copied from the Bible. The essay was afterwards embodied as an introduction to the metrical translation of the "Divine Lay" published in 1875.

In the same year he contributed four essays to the *Indian Antiquary*: (1) on the Drama of Bana called *Parvati parinaya*; (2) on Kalidas, Shriharsha and Chand; (3) The Ramayana older than Patanjali; (4) Note on the Ramayana. The same year he read two learned papers before the Bombay Branch of the Royal Asiatic Society: (1) on the Chalukya copper-plates; (2) the Date of Madhusudhan Saraswati, the author of "Gita Gudhartha Dipika". In this paper he combated the views of Lassen and Burnouf that Madhusudhan lived in the XVIth

century A.C. Telang came to the conclusion that he flourished in the reign of Aurangzeh either at the end of the fifteenth or the beginning of the sixteenth century.

In 1876, he wrote a note in the *Indian Antiquary* on Anandgiri's Shankarvijaya and read an essay on Three Copper-plates of the Kudamha Dynasty before the Bombay Branch of Royal Asiatic Society. In 1880, he wrote a note on the useful Marathi Serial, the *Kavyetihas Sangraha*, in the *Indian Antiquary*, recommending it to public attention as the work devoted to the publication of original sources of Maratha History. The same year he wrote an essay on the Silhat Copper-plate for the same monthly. In 1881, he contributed a review of Maudlik's Hindu law to the pages of *Indian Antiquary*.

In 1884, he read another essay on the Date of Shankaracharya before the Students' Literary and Scientific Society. He also read an essay on Purnavarma and Shankaracharya and another on the Gleanings from the *Sharia Bhashya* of Shankaracharya before the Bombay Branch of the Royal Asiatic Society.

We have so far dealt with Telang's essays on Social Reform and other kindred topics and with his essays on antiquarian research. We now turn to the books that he annotated or translated. He edited two Sanskrit works for the Bombay Sanskrit Series : (1) Bhartrahari's Niti and Vairagya Shatka ; (2) The Mudrarakshasa of Veshakhadata. His metrical translation of the Bhagwadgita to which is prefixed his reply to Dr. Lorriinger, and his prose translation of the same work for Max Muller's "Sacred Books of the East Series", complete his work in the field of Sanskrit literature. His essay on Free Trade and Protection written in 1877 for the Sasoon Mechanics Institute shows his thorough assimilation of the literature of Economics avail-

able in his day and his power of applying economic principles to Indian conditions. Telang, like his master and friend Ranade, advocated Protection and made a strong plea against treating economic principles as absolute Mathematical laws. The spirit of judicious enquiry dominates the whole essay.

Another essay of his deals with the social and religious aspects of the history of the Marathas as gathered from the examination of original documents. It was delivered as a lecture before the Deccan College in 1892. "Mr. Telang's paper represents," writes Justice Ranade in his preface to the *Rise of the Maratha Power*, "the true spirit in which native historians should treat the past history of their country." It has also a melancholy interest attached to it. It was a sort of prelude to the more comprehensive work on the History of the Marathas which he had undertaken to write for Longmans.

Telang translated two books in Marathi : (1) Chalmer's Local Self-Government and (2) Lessing's "Nathan the Wise". In the preface to the 1st book he explains the reasons that induced him to undertake the work. Lord Ripon's Government had granted in 1884 the boon of local self-government to the people. The Poona Sarvajanik Sabha had sent round preachers to spread information as regards the functions devolving on the people in consequence of the boon conferred. Telang thought it his duty to make available for those who did not know English, a systematic treatise in Marathi on the subject of Local Self-Government.

The translation of Lessing's "Nathan the Wise" was undertaken with the purpose of directing the taste of Marathi readers to healthy, instructive, elevating, first-rate foreign literature. The translation of Reynolds and

Boccacio threatened to poison the spring of pure literature. Telang wanted to stem the tide. The *drama* was translated also to inculcate the principle of toleration on the mind of its readers.

INTEREST IN EDUCATION

Mr. Telang was fully aware of the exigencies of his own times and the peculiar position of his country and hence his ideal of education was all inclusive. The curriculum which he drafted, and which was adopted by the Senate of the Bombay University in 1891, was framed with this ideal in view. Telang wrote :

A B.A. cannot be and ought not to be expected to be a master of any particular subject, an authority upon it immediately after his graduation. A B.A. should, I think, be a man who has had the general cultivation which ought to be the basis of all special cultivation. He should know English and a classical language, should have the discipline which Mathematics gives, should know the elements of logic and of political economy and physical sciences and have a general knowledge of the history of England and India.

The curriculum in the Arts Course of the Bombay University from P.E. to the B.A. was framed with this leading principle in view. The best opinion of the time was in Mr. Telang's favour. On the Committee along with Telang were men like Justice Birdwood, Dr. Mackhikan and James Jardine—men distinguished for their scholarship and free from the narrowness of the expert. Telang extended the academic life of the student from three to four years and gave him a respite of one year from the annual round of examination at the end of the third year. His aim was that, that year should be devoted to a steady pursuit of knowledge, to "browsing at large in the library" and making a close and wider acquaintance with "the masterminds of old". He transferred the group of History and Political Economy from the class of optional to the class of compulsory subjects. It was his opinion that

every Indian ought to have a sound general knowledge of the history of his own country, of the vicissitudes it had passed through, of its past sufferings and triumphs, of its turmoils, of its social and political mistakes, so that he might play his part wisely in the work of amelioration and reconstruction to which he must, as a patriot, dedicate himself. In addition to the knowledge of the history of his own country, he must also know the history of England which was a model for wise political action.

As regards the other phases of the educational problem, his views are to be gathered from the minute of dissent he wrote to some of the recommendations of the Education Commission appointed by the Government of Lord Ripon in 1882. The object of the Commission was to enable the Government to know how the policy introduced by the Educational Despatch of 1864, had answered its purpose; "how far the superstructure corresponded with the original design". The Commission was asked to suggest such methods as it might think desirable with a view to more completely carry out the policy therein laid down. The Government, it was declared, was firmly convinced of the soundness of the policy and wanted to further extend the system of public instruction on a popular basis. Telang, like Dr. Gurudas Banerjee, was for broadening the basis of education as a general policy, for making it cheap, for affording full opportunity for as many as could avail themselves of the light of Western thought. He was against the policy of exacting too high and unpractical conditions from the founders of new Colleges.

While yielding to none in his appreciation of original research, to which he had contributed in no small degree by his own efforts, Telang held that in matters of University Education "breadth should on no account be sacrificed

to depth". We must welcome all light, especially the "British light" he said on one occasion and it must be diffused far and wide. "The greatest benefit of English education was the seeds it had sown for all kinds of reform;" and therefore he would never throw obstacles in the way of his countrymen that prevented them from acquiring that education.

On the question of mass education, he says :

I unreservedly accept the view that without mass education the country will never be able to enjoy to the full the fruit which it has a right to expect from higher education. But in this as in other spheres of education, "the different branches of education should move forward together. The pushing forward of primary education is impossible without higher education. The one should not be fostered by starving out the other. In the present condition of India, it devolved as a sacred duty upon the State to promote the popular as well as the superior and secondary instruction.

In my opinion, said Telang, the whole religious, social, political and industrial advance of the country depends on the steady adhesion to that enlightened policy as regards high education which has probably been the most generally approved portion of British Indian policy in the past. In order that private effort should be forthcoming in any district, high education must, as a general rule, have been in existence in that district for some time.

To this part of the State's duty, Telang drew the attention of Lord Ripon's Government in the following words :

I hope that the Government of Lord Ripon which has already done so much for the country, will add the educational to its many laurels and achieve directly or indirectly the credit which Matthew Arnold gives to the Government of France on the Restoration after the battle of Waterloo. "To the Restoration," he says, "is due the credit of having first perceived that in order to carry on the war with ignorance, the sinews of war were necessary." Other Governments had leered systems of education for the people, the Government of the Restoration decreed funds. The question of popular education is mainly a question of funds. What is wanted and what we must trust to, is not the short-sighted economies in the expenditure on higher education which have been suggested by some irresponsible reformers of our system, but effort on the part of the British Indian Government to follow, at however great a distance, the Imperial Government which has in ten years increased its grant to education from £1,940,000 to £4,290,000 sterling.

Telang's political ideal and his political method were the ideal and the method of the generation that preceded him. He was brought up in the school of Dr. Bhau Daji, Nowroji Furdoonji, Mandlik and Dadabhoy Nowroji. Their patriotism was marked by sanity and self-control. Their method of criticism was characterised by what Bagehot called "animated moderation". There was independence of spirit and searching criticism. But the undertone was a deep and rational feeling of loyalty. That loyalty was as much based on reason as on self-interest. They looked upon the British connection in the light of a Providential dispensation, not merely in a spirit of fatalism but with the strong faith of reasoned conviction. Self-interest and good faith therefore bound them in chains of loyalty to British rule in India.

Their criticism of administrative measures was consequently broad-minded, rational, and based on the thorough knowledge of facts. It was marked by sobriety and thoughtfulness and wise insight into the needs of the hour. Yet it was far from being of a halting or hesitating character. They were keen in detecting flaws and fearless in exposing them.

Their task was twofold. They had to build up public opinion to strengthen their case. They had also to turn the face of the State towards the nation rather than towards the bureaucrats. Their work consisted in securing for individual Indians equality of treatment with individual Englishmen. With this end in view they agitated for throwing open the responsible posts in the administration to worth and merit wherever it was found. Fitness alone, they argued, should be the criterion of eligibility, a rule proclaimed long before but observed rather in the breach than in the performance. Competition rather than

patronage should be the governing principle. To make the competitive test equitable in its operation, they urged upon the rulers the advisability as well as the justice of holding the Civil Service Examination simultaneously in India and England.

ADMINISTRATIVE REFORMS

The other thing they sought to achieve was, to transform the purely personal form of government into one in which there was scope enough for consulting and knowing the wishes of the people. With this object they set themselves to the task of agitating for reform in Municipal franchise for the grant of local self-government which is "the fittest preparation and the most convenient stepping-stone for anything approaching to a constitutional regime".

They also wanted that the legislative bodies might be expanded, reformed and fostered into "useful institutions, proving a convenient channel through which the European element in the Government might obtain an insight into the inner mind and the less obvious wants of the native population".

The political struggle between 1872-1889, the period of Telang's active work in the field of polities, turned mainly round these two principal demands.

The State in India, even in these days of expansion and reform is, to use the significant phrase of Dr. Emil Reich, "an endless array of bureaucrats". It was much more so in the early years of Indian political life. Backed by the prestige of England, and with a free field before him for the exercise of power, the bureaucrat of those days considered himself self-sufficient. He was a law unto himself. He resented criticism and considered controversy as highly irritating. His policy and measures were conceived and hatched up in the dark and

came upon the people with the suddenness of a cataclysm of Nature. He went out in search of arguments to bolster up his theory, however much it violated all the fundamental maxims of good government. He was a master in the art of finessing.

Bureaucracy was indeed a splendid machine, but its efficiency was marred by inelasticity. It was, to use the words of Sir Charles Dilke, "secret and irresponsible". Irresponsible autocracy, secrecy of method, proud indifference to public criticism, lofty contempt for advice, were the prevailing modes of those times among the bureaucrats. The good or bad management of finance, the equality or inequality of taxation, the economy or waste of revenue, a policy of peace or war, expansion or retrenchment—all turned upon the whim or caprice of the individual head of the Government. There was no council powerful enough to control or guide. The councils, to use the phrase of Telang, were "little better than a solemn farce".

This want of consistency and continuity in the method of government, this defiant attitude towards public opinion, this triumph of personal rule became most marked in the regime of Lord Lytton. All the acts of that regime, from the wasteful expenditure of revenue on the Frontier policy to the abolition of cotton duties, came in for a sharp criticism at the hands of the non-official public opinion both Indian or European.

Some of Telang's remarkable utterances were delivered at public meetings held to protest against the reactionary measures of Lord Lytton. These utterances reveal at once the sobriety, the self-restraint, the power of close reasoning and penetrating criticism, all pervaded by a vein of subtle humour. The expression is remarkably lucid and singularly free from "the topdry of sentiment".

The first act of Lord Lytton's regime that came in for a severe condemnation at the hands of the people was the Revenue Jurisdiction Bill of 1876, a Bill that was opposed by the High Court, the Bombay Government and the people at large and that was passed in the teeth of that opposition. The Bill "transferred the cognizance of disputes in which the fisc was concerned from the civil courts to the revenue officers".

At a meeting held to petition the Secretary of State to withhold his sanction to the Bill, Telang made a speech much praised by the *Gazette* for its lucidity. From that speech we cull the following passage which admirably sums up his view on the subject :

The Bill marks a tendency to bring people back to the days of personal government. It is objectionable on the ground that it vests in the revenue officers authority which they ought not to have, and takes away from the civil courts a power which they ought to have against arbitrary action by revenue officers. It is not enough to be just, the officers must seem just. In the hands of the Judges, the rights of the ryots were perfectly safe; in the hands of the revenue officers, though they might be so, the ryots themselves will not believe them to be so and that is a very strong reason why the Bill should be condemned.

In spite of this protest the Bill became Act 10 of 1875. It was the mixing up of judicial and executive functions—a principle disapproved by all and the struggle against which began from this early date—a struggle which has not yet resulted in the abandonment of the procedure, the viciousness of which has been admitted on all hands at present. Telang's remarks show an admirable insight into the fact that an occasional defeat in a civil court is a great support to Government in the long run, because it bases British rule on the moral approbation of the people, which depends to a large extent on their faith in the Government's sense of justice and fair play. That faith is strengthened

only when the Government is willing to submit its own acts to the jurisdiction of the Courts which it has itself established.

The next speech which Telang delivered was on the License Tax levied in 1878, to contribute towards the formation of the Famine Insurance Fund. A meeting was held in the tent of Wilson's Circus, as the use of Town Hall was refused for the purpose by the Government, to memorialise to the House of Commons against the tax. It was shown "that the tax was faulty in its details and odious in the principle, that it struck too low and exempted on the one hand high officials and on the other men of the learned professions".

It was levied on traders who were the greatest contributors to indirect taxation and on agriculturists who were already heavy-burdened with the enhanced duty on salt and who were already paying the land tax. Telang showed the arbitrariness and absurdity of the tax by these remarks :

The grounds on which the proposal to levy this tax is based are : 1. That those who have taken such great pains in meeting the famine are not the proper persons to be taxed in order to defray the expenditure that has been incurred.

2. That inasmuch as these officers of Government are not to be taxed, therefore all other Government officers shall not be taxed and people who may in some sense be supposed to stand in the same position ought not to be taxed ? Because these ought not to be taxed therefore the professional classes should not be taxed. Naturally enough the only persons fit to bear the burden of taxation were the traders and the agriculturists.

The absurdity of the method is thus cleverly brought out by carrying the principle to its logical conclusion. There is humour enough without sting or satire. Lord Lytton had asked, if we are to tax all these classes where are we to stop at all ? Telang retorted why stop anywhere at all : why should any class be exempted from the burden ? Let all contribute their share towards the Famine

Insurance Fund. Let not the agriculturists and traders, in addition to the burden of the tax to be paid, feel the odiousness of it. It was in this speech that he characterised the Legislative Councils of the time as "little better than a solemn farce".

When the independent members happened to agree with a Government measure, their opinion was spoken of as representing the general opinion of the public, but when they opposed any measure which the Government thought fit to introduce, their opinions were spoken of contemptuously as a mere individual opinion not representing the general views of the public with which the Government officers were much better acquainted themselves.

The next measure of Lord Lytton's that roused the bitter opposition of the public was the Vernacular Press Act, otherwise known as the Gagging Act.

Telang in a series of articles to the *Indu Prakash* exposed in detail the inexpediency, the futility and the inequity of the measure. In the first two articles he discussed the Act, section by section, pointing out its many flaws with the keenness of a lawyer, showing the injustice of the whole Act. He complained that the Court had no jurisdiction in administering the Act. The wording of the Act was so loose as "to bring within its sweep any inconvenient publication". It was not "consistent with the loudly repeated belief in the loyalty of the educated classes".

"The tendency," he wrote, "to replace the reign of law by personal government is, in spite of Sir Henry Maine, becoming stronger in the country day by day. Every officer will identify himself and his doings so far with the government established by law in British India as to punish all adverse criticism of himself as being "likely to excite disaffection". We hold that such restrictions on the freedom of the press are unjust, inexpedient and utterly powerless to produce the ends desired. Nay they are very powerful agents for bringing about the very results which they are designed to avert."

As regards the clause which required the whole matter to be submitted to the Government officer before publication, Telang wrote :

The officer will have his likes and dislikes, his feelings in the light of which he will look to everything placed before him. What guarantee is there that the power may not be abused even from the purest of intentions.

Telang concludes the second article on the Act thus :

It appears to us to be descent from the higher level of political status which, under the wiser British Government, we had already reached into the slough of patriarchal rule and personal government. If there was one thing more than another to which an advocate of the British Government could point as marking unmistakably the superiority of it to by-gone governments, it was after the liberty of speech and thought, this reign of law-liberty of speech, which is now become to a considerable extent a thing of the past under the provisions of the Gagging Act. The reign of law is passed, ceasing under the hands of these sapient legislators who have been ruling the past few years.

From the Vernacular Press Act, we pass on to the abolition of import duties on cotton. The duties were abolished by the Viceroy, "overruling a majority of his colleagues in Council". "The Viceroy stood," as Telang puts it, "in a glorious minority of two against a very large number against him." This was "one of the many indications of a new departure in Indian policy". "It was an indication of Government according to the whims and caprices of individual officers and that the Government by cabinets or councils was passing away." The condition was most unsatisfactory and mischievous. Besides as Telang pointed out in a meeting held to petition in the House of Commons against the Act, it was a "breach of promise solemnly given to India indirectly through the replies to Manchester both by Lord Salisbury and Lord Lytton, that they would be no party to a repeal of these duties if there was to be substituted for them some other mode of taxation". Such a taxation was imposed by the

License Tax and the raising of the salt duty. A revenue that the State already possessed in the returns of cotton duties was sacrificed to burden the famine-stricken ryots at the most inopportune moment with enhanced salt duty and the odious because partial License Tax.

This closes the regime of Lord Lytton. The tide now turned. The liberal ministry came in power in 1881 and sent Lord Ripon to fill the place of the Viceroy. He redeemed once more the glorious name of England as the mother of free institutions and the jealous guardian of the interests of the country committed to her care.

Lord Ripon's rule in India marked a transition from the old to the new. The form of government was yet purely personal but a sincere attempt was made to make it more and more "broad-based upon the people's will". It was a conviction with Lord Ripon that England was to labour not for the material welfare of India alone; she must bend all her energies and her iron will, as he expressed it in one of his last speeches, to raise the people in the scale of nations by attending to their intellectual development, political training, and moral elevation. In all his measures, whether they deal with education, local self-Government or repeal of the Vernacular Press Act, it was in this spirit that "he endeavoured to discharge the arduous task which for four years was entrusted to his care".

THE ILBERT BILL

We now turn to one measure which more than anything else marked the temper of the Government, *viz.*, its earnest and sincere desire to treat all people alike, to do away with privileges and exemptions as marking the governing from the governed. We refer of course to the Ilbert Bill—a measure which

roused the bitterest opposition on the part of the Anglo-Indian community. The Ilbert Bill sought to do nothing more than introduce an amendment in the Criminal Procedure Code which empowered native magistrates to try European criminals. The opposition to the Ilbert Bill was headed by members of the Civil Service, and as Sir Henry Cotton has put it in his latest book: "The practical unanimity of opposition to that measure was as complete among civilian magistrates and judges as it was among planters, merchants and members of the legal profession." Lord Ripon was "harassed beyond measure by the bigotry and race feeling of his own countrymen". Mutual denunciation and recrimination were rife in Calcutta, both in the Anglo-Indian and the Indian community. The Viceroy was openly insulted at the gates of the Government House by the Europeans. The European community forgot that it was European. As Mr. (now Sir Dinshaw) Wacha has put it: "It was scratched on its back and discovered to be primitive Tartar."

Every one seemed to have lost his head. "Matters reached such a pitch that a conspiracy was formed by a number of men in Calcutta, who bound themselves in the event of Government adhering to the proposed legislation, to overpower the sentries at Government House, put the Viceroy on board a steamer at Chandpal Ghat and deport him to England round the Cape."

"The dead wall of antagonism" by which Lord Ripon was confronted became for him too hard to overcome single handed. As a result, a sort of compromise was effected which was "the virtual though not avowed abandonment of the measure proposed by the Government". It was in Bombay alone that "there was discerned nothing, or next to nothing of that fury, abuse and

wild fanaticism which disgraced Bengal". The Anglo-Indians and the Indians, though they differed from one another, conducted the discussions in the papers with a dignity, moderation and sobriety, becoming true citizens. It is the Indian community that at this time evinced in their conduct a spirit of loyalty more loyal than that of the Anglo-Indians. They accorded Lord Ripon enthusiastic support in all his measures. A public meeting was held in Bombay to memorialise the House of Commons from the Indian point of view. Telang, Mehta and Budruddin Tyabji were the principal speakers.

"Equality before the law, as enjoined by the Act of 1833 and the Proclamation of 1858, were the two principal points elaborated." Telang's speech mainly dealt with the objections raised to the Bill by Sir Fitz-James Stephen, in a letter contributed by the latter to the *London Times*. It is characterised by perfect reasoning, and calm and judicious exposition. A spirit of self-restraint is manifest throughout. Telang was fully conscious of the deep truth that no eloquence is more convincing than the eloquence of simple assertion, supported and sustained by the clear statement of facts. The speech is remarkable for its sobriety of tone and earnestness of conviction.

A calmer and more solid piece of forensic ratiocination in the midst of the fiery whirlwind of passion and prejudice raging outside the Presidency was never heard before. It was also a fine example of that intense self-restraint which the serene and far-sighted statesman, who is not merely the politician, puts upon himself during an eventful crisis.

The speech is remarkable from many points of view. It repudiates the gospel of force as symbolised in the attitude of some Anglo-Indian statesmen, who said that as India was won by the sword it can only be retained by keeping British prestige intact. "The passing of the

Ilbert Bill," they said, "would shift the foundation of British rule in India." They prophesied imperial ruin and the collapse of British prestige. Of the fraternity who held this view, Sir Fitz-James Stephen was the most conspicuous member. Telang characterised Sir Fitz-James Stephen's political creed as the gospel of force. That gospel was "in obtrusive antagonism to the doctrines of modern liberalism in the broader and higher sense, as signifying those political principles which for us in India are embodied in the great Proclamation of 1858".

Holding as Sir Fitz-James did such a political creed, Telang said: "Even his support, if he supported any measure of Government which involved any of these principles, would be an occasion of embarrassment." So much by way of preface. Telang answered point by point all the objections raised by Sir Fitz-James Stephen. We have not the space to review his whole speech which is well worth reading. We only note a passage bearing on the broad issue of England's work in India. Sir Fitz-James had written that the policy of Lord Ripon's Government was inconsistent with the foundations on which British power rests. Telang replied that he denied it entirely.

That the principles of Lord Ripon's administration were in consonance with the long established principles of the British Government as laid down by Parliament and the Crown, and further that they were in accord with the lessons to be derived from the study of past history.

Then follows an eloquent passage which is worth quoting in full as giving us a complete insight into Telang's ideal of England's mission in India.

I remember being struck many years ago in reading the history of the Romans under the Empire, with a passage in which the author said that one great lesson to be deduced from the history of Rome was that all conquering nations, in order to render their Government in the conquered countries stable and permanent, must divest themselves of their peculiar privileges by

sharing them with the conquered peoples. Now, gentlemen, we all know that it is the proud and just boast of Englishmen that they are the Romans of the modern world and the British Empire is in modern days what the Roman Empire was in ancient times. If so, are we wrong, are we unreasonable in asking that the lessons of Roman history, and as Merivale points out, the lessons of the history of other ancient Governments also, should be adopted by our British rulers ! "Is it not quite proper and reasonable for us to ask that the countrymen of Clarkson and Wilberforce, of Gladstone and John Bright, should not only adopt those lessons but improve upon them and rise superior to the countrymen of Marius and Sulla, the Triumvirs and the Caesars ? I venture to say, gentlemen, that if Britons are now content to fall to carry out those lessons and to fall short of the generosity of the Romans, it will be regarded as not creditable to them by the future historian. And as a loyal subject of the British Government, I should be sorry for such a result.

The House of Commons, as the events proved, could do nothing to support its own Viceroy against the clamour of the Anglo-Indian. Though the Bill was not avowedly withdrawn, its shrinkage in the Legislative Council was tantamount to a virtual abandonment of the principle it was sought to enforce. The wisdom, sobriety and right direction of which Telang spoke in almost his last public address were the remarkable features of the agitation over the Ilbert Bill, in Bombay piloted by leaders like Telang, Mehta and Tyabji deservedly known as the triumvirate of Bombay's political life. Their attitude secured the compliment of Lord Croker who characterised the public opinion of Bombay "as expressive of the best type of political thought in India". "This appreciative sentiment," as Mr. (now Sir Dinshaw) Wacha has told us, "had reference to the sobriety and ability with which the great historical meeting in Bombay in support of the Ilbert Bill was conducted."

LORD RIPON'S VICEROYALTY

The next memorable speech of Telang was in connection with the public meeting held to commemorate the

viceroyalty of Lord Ripon. In that speech he gave reasons for his participation in the movement. Telang in that speech takes up every measure of Lord Ripon and shows how in all his doings the ryot was the object of his "moving active sympathy". His policy deserved praise, because "it was diametrically opposed to the policy of carrying taxation along the line of least resistance which commended itself once to some great masters of statecraft". There is an underlying irony in this remark, because the great master of statecraft Telang refers to is evidently Lord Ripon's predecessor under whose administration the finances of India were in a state of hopeless muddle. Telang sums up the spirit of Lord Ripon's rule thus:

Whether we look at the repeal of the Vernacular Press Act or the resolution for making public the aims and scope of Government measures, or the practice of inviting people's opinions on contemplated projects or whether we look to the great scheme of local self-government, or the manner in which Kristodas Pal was appointed to the Supreme Legislative Council, we see clearly the liberal policy of Lord Ripon's Government.

Adapting the lines of Tennyson, Telang concludes the speech thus :

"Lord Ripon has made the bonds of freedom wider by shaping divers august degrees, which have not only left Queen Victoria's throne unshaken in this land but have made it even more broad based upon the people's will. It is that on which, in my humble judgment, rests most firmly Lord Ripon's claim to our gratitude. It is that which justifies the remark that summing up the result of Lord Ripon's rule, you may say, borrowing again the language of the laureate (Tennyson) that "he wrought his people lasting good".

The Indian community discovered its own strength of combination, its capacity to co-operate in spite of differences of creed and custom on two occasions in the reign of Lord Ripon. First, in supporting the Government in its introduction of the Ilbert Bill and, secondly, in connection with the hearty send off it accorded to Lord Ripon. For the

first time in its long history, India forgot that it was a congeries of different nationalities.

THE MOVING SPIRIT OF THE CONGRESS

The Indian heart beat to one common impulse, it resounded to one common sentiment. Her Majesty's permanent opposition, the sobriquet given to the microscopic minority of the educated classes "walked", to use the phrase Telang used, "for once into the ranks of the ministerialists". The lesson of common agitation thus learnt was well laid to heart. Out of the impulse thus given sprang a movement, which was to bind the sympathies of all and bring about a coalition and union for common ends. The birth of that movement was the indirect fulfilment of the policy of Lord Ripon. In reviewing Telang's work as a politician, it is this movement, the growth of which from a seedling into a strong and firm-rooted plant, he watched and fostered for well-nigh a period of 8 years that will occupy our attention now. He was the moving spirit of the Congress from its very inception. From 1885-1889 he worked as its general secretary.

His interest in the two organisations in the initiation of which he had a great share, *i.e.*, the Bombay Presidency Association and the Congress, continued unabated to the end of his life.

Before, however, we turn to Telang's work in connection with the Congress, we have to dwell for a while on his work as a secretary of the Bombay Association, the Bombay Branch of the East India Association started by Dadabhoi Nowroji and of the Bombay Presidency Association started by Telang, Mehta and Tyabji in 1885. It was his work as a secretary of these Associations that gave him the training which made him such an effective force in politics. It was

as early as 1873, a year after he had entered the profession, that he became the secretary of the Bombay Association started by Bhau Daji and others in 1848 at the instance of Dr. Buist, the veteran journalist of the time. Later, in 1868, was started the Bombay Branch of the East India Association by Dadabhoy Nowroji. In 1860, the Bombay Association had collapsed, and the Bombay Branch of the East India Association was about to share the same fate. Dadabhoy revived it once more by introducing new blood. The Bombay Branch of the East India Association was found after the events of 1883 and 1884 inadequate for "the extended sphere of political activity which was recognised as essential in view of the greater needs of the country". A new political organisation was therefore started in 1885 which has been doing its useful work for the last 46 years. With all these three Associations, Telang was vitally connected as their working secretary. It was in this capacity that he received his first lessons of wise agitation.

It was Telang's long experience of the practical part of political work as a secretary that kept his utterances free from "the feopery of high-flown sentiment", and endowed him with a practical turn of mind, sobriety of judgment and close powers of reasoning.

From Telang's work as the secretary of the Bombay Presidency Association we pass on to his work as a member of the Bombay Legislative Council of which he was a member for 5 years. He was nominated in 1884 by the Government of Sir James Fergusson and the appointment continued on by further nomination through the reign of Lord Reay till 1889. In his capacity as a member of the Council, he proved himself an "effective and active critic" of Government measures. Perhaps the

most important Bills introduced during his term of appointment were the Bill for the Amendment of the Land Revenue Code of 1885 and the City of Bombay Municipal Bill introduced in 1887. His general attitude towards these measures may be best summed up in the words of Sir Raymond West :

On all occasions he resisted excessive Government action and interference with the fair play of individual will under the traditional conditions, but always with an elevation of view and a sense of responsibility which made his very opposition an ultimate source of strength.

In his advocacy of people's grievances he was neither fussy or meddlesome, but when he thought that a principle was at stake, he was the foremost to assert it and he asserted it in no hesitating tone.

We now turn to the last phase of Telang's political activity, namely, his work in the Congress. This is not the place to trace the genesis of the Congress. Suffice it to say that to Mr. A. O. Hume goes all the credit for the starting of a movement that was to grow in course of time into such a mighty and potent instrument of national awakening. The Congress held its first Session in Bombay in 1885. For four years till 1889, Telang took a most prominent part in its deliberations.

Evidently Telang was not afraid of making the administration of India a party question. Knowing as we do his leanings, and relying as he did upon past experience, it is not difficult for us to see with what party he would have been willing to throw in his lot. It was to the countrymen of Gladstone, Bright, Clarkson and Wilberforce that he appealed in one of his speeches. It was the Government of Lord Ripon that had stood up in his eyes for principles of the Proclamation. Naturally enough therefore the party that gave such a Government was the party towards which

his sympathies would incline and to which he would look up for a progressive measure of Constitutional Government.

Telang's great objection to the existence of the India Council "was that most of its acts and deliberations were done in secret conclave, so that for good or for evil, its work was not easy to survey and judge". Furthermore "even if some Indians were appointed to the India Council", in Telang's opinion,

an individual member of a Council sitting in London would be quite unable to make his influence felt in all departments of the administration, for there was in the India Council specialisation of functions and work in the same way as there is in the Executive Council in the country.

For two years Telang could not attend the sittings of the Congress held at Calcutta and Madras. In 1888, he attended the Congress at Allahabad presided over by George Yule and spoke on the resolution of the Reform of the Councils, upholding the same scheme that he had developed in 1885 and dealing with the comments made against the Congress propaganda by highly placed Anglo-Indian officials and more especially by the Viceroy himself in his postprandial utterance at the annual St. Andrew's Dinner held in Calcutta. Lord Dufferin's attitude towards the Congress was in the main of cordial sympathy. It was owing to his suggestion that the Congress developed into a political gathering. When Mr. Hume, in an interview at Simla, laid before the Viceroy his project of arranging for an annual meeting place where leaders of Indian thought could come together and discuss social matters, Lord Dufferin told Mr. Hume that it would be far better if the leaders met and pointed out to the Government "in what respects the administration was defective and how it could be improved". Lord Dufferin said that there was no body

of persons in India who performed the functions which Her Majesty's Opposition did in England.

The newspapers, even if they really represented the views of the people, were not reliable, and the English were necessarily ignorant of what was thought of them and their policy in the native circles.

He therefore proposed that

the Indian politicians should meet yearly and point out to the Government in what respects the administration of the country needed reform to bring it in a line with the wishes of the people.

When Mr. Hume laid this scheme before the leaders of different provinces, it met with the approval and support of all. When the Congress met in Calcutta in 1886, Lord Dufferin invited the leading politicians to a garden party. Thus Lord Dufferin's attitude towards the Congress was in the main sympathetic. Consequently when Telang answered the comments of Lord Dufferin, it was to show that Lord Dufferin had clearly misapprehended the attitude of the Congress. The speech which he delivered on this occasion bound fresh laurels to the brow of Mr. Telang. Sir Dinshaw Wacha said of it: "To my ears it rings as if it had been delivered yesterday, full as it was of that close reasoning, persuasive eloquence and convincing logic of which he was master." Mr. John Adams who attended the Congress, at Allahabad, characterizes it thus :

No one who was present at Allahabad when all India was reeking with the exuberant verbosity of the St. Andrew's Dinner Speech can forget how the passage in which Telang compared the remarks of Lord Dufferin on the Congress proposals to somebody's definition of a crab brought down the house, and the (pawky?) way in which the speaker's eye suggested that the fable of the crab might be given a slightly different application.

It, in his speeches on the cotton duties and the License Tax, Telang had set himself "to denounce the jingoism of Lord Lytton" and in his speech on the

Ilbert Bill and on the retirement of Lord Ripon, he had "applauded the liberalism of that generous-hearted Viceroy", in the speech delivered before the Congress at Allahabad, Telang, in the opinion of John Adams, made it equally clear that he would have none of the diplomacy, the *tortuous haute politique* which Lord Dufferin for its sins imposed on India. The passage containing the reference to the fable of the crab is worth quoting and runs as follows :

The various charges which his Lordship makes against the Congress, are charges which remind me of a certain definition which was once given of a crab, *riz*, that a crab is a red fish which walks backwards, and the criticism made upon that was that the definition was perfectly correct except that the crab was not a fish, that it was not red and that it did not walk backwards. Now I may say that Lord Dufferin's criticism is perfectly correct, except that we have not asked for democratic methods of government, we have not asked for Parliamentary institutions which England has got after many centuries of discipline: we have not asked for the power of the purse: and we have not asked that the British Executive should be brought under subjection to us.

The Congress of 1888 was the last Congress, Telang attended. Before its next meeting in Bombay in 1889, he had been elevated to the Bench and could no longer be an active worker in the political field. In the Age of Consent controversy, Telang again came to the forefront to define what he thought the limits of State action. There again he shone out as the bold champion of what he considered to be the right and true course of action. Then it was that he proclaimed that a man may renounce his right but can never renounce his duty. What is true of a single individual, is more true of the State.

Telang's period of active work covered only twenty years. Considering that the last years of his life passed away in the trammels of office and in a very precarious and poor state of health, it betrays marvellous precocity of

talent to find so much sterling work, so much earnest endeavour compressed within such a small span. The honours that come to a man at the very end of his career were showered upon him in the very prime of life and the position he won in the hearts of the people would have constituted for any other man a sufficient reward for the last days of a long life spent in the service of his country. Mr. Telang's career was meteoric but it left permanent traces on the generation that followed him. To this day his words carry conviction and are pregnant with sage counsel. He died in the prime of life at the age of 43 when others begin their public career and yet his scholarship, insight, and foresight invest his utterances with the breadth and penetration that come only from the riper experience of life and its stern discipline.

Telang embodies for modern India a type of culture and enlightenment in which currents of opposite kind had commingled to constitute the light, wisdom and the sobriety of his opinions. He was a great Sanskrit scholar, a deep student of Marathi literature and history, at the same time that he had thoroughly imbibed the spirit of Western thought as reflected in its literature, history and philosophy.

Telang was indeed a scholar of versatile talents: but we are, in this sketch, more concerned with Telang the Judge rather than the scholar or patriot or reformer or the great orator that he was. We must, therefore, conclude with a review of his brief but brilliant career on the Bench—a review, though perfunctory, of his more striking judgments.

Mr. Justice Telang was the third Indian Judge of the Bombay High Court. In him were combined with

uncommon attainments as a lawyer, scholarship of the very first order. . . .

He was on all hands regarded as one of the most accomplished products of the University life in India. The course of his discipline which he underwent to prepare himself adequately for the Bar is stimulating reading—a course of logic, study of Paley's "Evidences of Christianity", and Mill's "Examination of Hamilton's Philosophy". Though he was on the Bench just under five years, he has left enough to give us an idea of his ability and his research. He has written a number of masterly judgments on Hindu law which not only marshal authorities but also discusses the subject with an insight into the Hindu legal methods. . . . He was against copious extracts from judgments or authorities. He generally preferred to give their purport or at the most extract a striking sentence or two. An idea of the impression that he made on his colleagues may be gathered when we see that such a strong Judge as Sargent, C.J., allowed him to deliver judgments on important questions of Hindu law which you will find him, not allowing even West, J., to do.

Sitting with the Chief Justice in an appeal from the Original Side of the Bombay High Court, he decided that a *guru* who occasionally came to Bombay and received voluntary offerings made by his pupils and devotees for their own spiritual benefit does not, by transmitting those money presents to his *pedhi* at the city, "dwell or carry on business or work for gain" within the meaning of clause 12 of the Letters Patent of the Bombay High Court to enable a plaintiff to sue him there. And it is interesting to note that his decision was upheld by the Privy Council.

During the period of less than five years he sat as a Judge, he had delivered many noteworthy judgments, a few of which will be noticed here.

In *Giriapa v. Ningapa* (reported in I. L. R. 17 Bom. 100), he elaborately discussed the authorities on Hindu law and decided an adopted son gets a fifth share of his father's estate if a son is born to him after the adoption. In *Gojabai v. Shrimant* (reported in I. L. R. 17 Bom. 114),

he held on a consideration of the original texts of Hindu law, that a co-widow's grandson is a *stridhan* heir of a widow; in the course of the judgment, he remarked:

And upon the whole I am of opinion that the reasons for holding the rival wife's grandson to be a *sapinda* are so strong that to hold otherwise would be to afford an illustration of a dictum attributed to Sir J. Cebrire to the effect that a certain proposition may be absurd logic but it may nevertheless be good Hindu law. I am bound to say that I entirely deny the justice of that dictum and what it implies. And I cannot sanction a doctrine to which when coupled with other established rules, it will be fairly applicable.

Other notable decisions of his on Hindu law are: (1) *Nayresh v. Gururao* (I. L. R. 17 Bom. 303) where succession by remote *sapindas* was pointed out to be not *per stripes* but *per capita*. (2) *Apaji Nanken Kulkarni v. Ramchandra* (I. L. R. 16 Bom. 29 F. B.) where dissenting from the opinion of the majority, Telang, *J.*, stated that under the Hindu law applicable to the Satara District, a son can, in the lifetime of his father, sue his father and uncles for a partition of the immoveable family property and for possession of his share therein. In the course of his lucid exposition of this intricate point of Hindu law, Mr. Justice Telang draws pointed attention to the fact that many European writers had mistaken the *Purva Paksha* of the commentary *Mitakshara* to be the *siddhanta* or conclusion—the extracts made hereunder from that judgment is illustrative not only of the scholarly style and manner of exposition which characterized all his judgments, but also of the insight he had into the minds of the authors of the ancient Hindu law books.

It appears to me that to hold the right of partition to be so limited is to introduce words into the text of the *Mitakshara* which are not there and which moreover are not capable of being logically harmonized with the words which are there. And this unwarranted method of construction, as I must with all respect venture to call it, must appear, I think, to be particularly unwarrantable when we remember that it leads us to a denial of partition

while there is a full admission of ownership, as a result of the doctrines of a treatise which looks at the whole question of inheritance and succession mainly, if not exclusively, from the point of view of partition.

And the gentle rebuke in this passage is characteristic of Mr. Telang's innate culture :

If it is so held the "right by birth" which is the one great bone of contention between the schools of Jimutavahana and Vijnaneswara, will obviously become small by degrees and beautifully less and may after a little further development of the law altogether cease to exist except in name.

And the following remarks on the Mitakshara are memorable :

The truth is that the Mitakshara is not itself a systematic treatise on Hindu law discussing the topics that arise for decision in a logical order determined by the author himself. The Mitakshara is a commentary on the text of Yajnavalkya and is limited to a considerable extent by the text which it comments on. A mind like Vijnaneswara's of course would not be content merely with expounding the sense of the actual words of Yajnavalkya; and the Mitakshara therefore does contain in different parts a copious investigation of points kindred to those which Yajnavalkya's verses relate to. Still the main function of a commentator is of course to comment on his text and the order of ideas brought out in the commentary is necessarily governed to a great extent by the frame of that text. In a work so constructed and especially one which, as its name implies, was intended to be concise and of limited extent, it is unsafe to build any theory merely on the circumstance that a certain wide general principle enunciated in it has not been expressly worked down to a particular concrete conclusion. It seems to me obviously more safe and logical as it is more in accordance with Hindu methods of interpretation in the case of such works as the Mitakshara to gather together the principles unless such conclusions are found to be opposed to other well-established principles or of course of any proved custom. This is the only procedure that in my opinion can be legitimately adopted unless indeed we are prepared to hold that the Hindu law is a mere farrago of arbitrary rules and not a coherent system based on logical grounds.

In *Rambhat v. Timmayya* (reported in I. L. R. 16 Bom. 673) Telang, J., gave a decree for the plaintiff who sought to recover back ornaments given by him to the defendant's daughter on the defendant agreeing with him to marry her to the plaintiff's brother. He held that there

was nothing immoral or against public policy in enforcing such a claim. And he remarked in the course of the judgment in that case :

And so long as the present marriage customs are permitted by the law, there is nothing against public policy in enforcing the rule as laid down in that passage of the *Mitakshara*, chapter II, section II, pl. 28.

In *Bachara v. Kalingappa* (reported in I. L. R. 16 Bom. 716) Telang, J., held that under the Hindu law, the son of a paternal uncle is a nearer heir than the widow of a paternal uncle.

As examples of his able judgments in other branches of the law, reference may be made to (1) *Parashram v. Rakhmia* (reported in I. L. R. 15 Bom. 299) where he examines the principles of interpretation of the provisions of the Limitation Act. (2) *Vithu v. Dhondi* (reported in I. L. R. 15 Bom. 407) where setting up of a *mirasi* right by a tenant is held as not rendering notice to quit by the landlord unnecessary. (3) *Barjorji Dorabji Patel v. Dhumbai* (reported in I. L. R. 16 Bom. 1) where the circumstances are examined under which a settlement would be held as void being in fraud of creditors. (4) *Haji Abdul Rahman v. Haji Noor Mahomed* which lays down that a tender to be effectual should be followed by a payment into Court after the action is brought. (5) *Rampurtab v. Premshukh* (reported in I.L.R. 15 Bom. 93) where amendment of a plaint for which leave to sue on the Original Side of the High Court had been previously obtained was refused. As permitting an adjudication upon a cause of action different from that for which the leave of the Court has been obtained, and (6) *Narayan Jagannath Dikshit v Vasudeo* wherein the incidents of Saranjan tenure are held to prevail in the case also of persons who acquire the tenement by adverse possession.

When Telang was raised to the Bench in 1889, public honours which he regarded as so many opportunities for the better performance of civic duties, came to him in rapid succession. His learning and scholarship found recognition in his being elected in 1892 to succeed Sir Raymond West as the President of the Bombay Branch of the Royal Asiatic Society. His educational work was rewarded by the decoration of C.I.E., and by his nomination to the office of the Vice-Chancellor of the University--an honour which he did not live long to enjoy. He died in September 1893.

During the last year of his life, his rapidly declining health and the exhaustion consequent on a painful operation for piles, must have made his work at times almost a torture. He could not ascend the long flight of stairs leading to his Court without assistance. Still he struggled on bravely until wearied nature could hold out no longer. He died with calm resignation as he had lived in simplicity, benevolence and usefulness. (Sir Raymond West.)

India lost in Telang :

One of her wisest counsellors, one of her most brilliant scholars, one of her choicest speakers and one of the best of men. No bigoted firebrand, no disappointed place-hunter with a grievance, on the contrary, the friend and the trusted advisor of Governors and Councillors, with wealth and honour and troops of friends, he was even the incorruptible patriot, the sternest critic of the Government when he thought it to be in the wrong, the sturdy champion of the lawful demands of his fellow-citizens.

That is the testimony to his work by John Adams. The life-work of Mr. Telang unfortunately came to a sudden end. He was cut off too soon and yet he has left behind enough to serve us for guidance, help and instruction. His had been a vitalizing influence in his time. "It is by the work and the example of him and his like that India will be regenerated and the moral endowments of her children made nobly serviceable for the general welfare of mankind."



SYED MAHMOOD

SYED MAHMOOD

SYED Mahmood was perhaps one of the greatest Judges who ever presided over a chartered High Court in India. The second son of Sir Syed Ahmed, the famous Mahomedan patriot and worthy so well known in connection with his work for the advancement of Moslem education in India, he was born at Delhi in 1850. He received his early education at Delhi and in the Queen's College, Benares, and proceeded (on a Government of India scholarship) in 1869 to England where he joined the Christ's College, Cambridge, and had a successful academic career. He also distinguished himself by his knowledge of languages, European, Oriental and Classical. His illustrious father who had accompanied him stayed in England long enough, to mature with his son's active aid and co-operation his long contemplated scheme of Moslem education. The extent of help rendered by Syed Mahmood in this work to his distinguished father can never be easily set down. Though a student at Cambridge--his tutor was the late Mr. A. M. Bose, afterwards one of the most famous Presidents of the Indian National Congress--he proved of immense help to his father during the 17 months he stayed in England for planning out his life's work. Syed Mahmood also assisted his father in searching up (at the British Museum and elsewhere) original materials for a rejoinder to Sir William Muir's sketch of Mahomed in his well known *Life of the Prophet*. This rejoinder was published (by Sir Syed Ahmed) in

1870 under the title "Essays on the Life of Mahomed", and it is now an open secret that Mr. Mahmood was responsible for the translation of these essays into English. The work attracted considerable attention both in England and in India, and in its English garb favourably impressed scholars in both countries. The valuable work he had done for his father in England in giving shape to the latter's educational ideas stood him in great stead when he was (about 1871) called upon by his father to draw up the constitution of the Educational Board he set up to evolve his scheme of an Anglo-Oriental College for the advancement of his country. Mr. Mahmood drew up the required constitution and published as well the synopsis of questions put to persons of light and leading as to the best mode of regenerating the country. The result was that, in 1872, a Committee called the M. A. O. College Fund Committee was formed at Benares with a Sub-Committee at Aligarh. In 1873, Sir Syed Mahmood issued a circular addressed to the members of the Committee, submitting a full-fledged scheme for the creation of a Mahomedan University. The Residential College soon after (1875) was set up, and it is now the Aligarh University. To anticipate a little, it might be mentioned at this point that when Mr. Mahmood retired from the Bench, he returned to his first love, Education, and the M. A. O. College at Aligarh. He taught English in the College classes; he proved himself by far the ablest of its Trustees, later becoming its President, and the result of his connection with it from his undergraduate days was his *History of English Education in India*, a book as full of fecund thought as it is luminous in its treatment of a difficult subject. Mr. Mahmood's connection with education was in a word a lifelong one.

It was fruitful in divers ways of good to his co-religionists and to Indians generally. If Sir Syed Ahmed was full of original ideas, his distinguished son, Mahmood, found the reasoning for them and what is more, gave them shape and brought round converts to them from the generality of the community. It is fair to put the position thus: the father and son between them made up what was exactly required for thinking out and bringing into existence the nucleus of an organization which has now blossomed into a full-blown University of the most modern type.

AS A JUDGE

Mahmood had a brilliant career in England and was called to the Bar at Lincoln's Inn in 1872. He returned to India in due course, and after a comparatively short period at the Allahabad Bar, was made a District Judge at Rai Bareli in 1879, and later raised to the N. W. P. (now Allahabad) High Court Bench. His first appointment to this post was an officiating one, made in 1882. After a reversion to the Bar, he was appointed permanently to it. This was the capacity in which he was best known to the public in India. Some of the judgments he delivered have become classical and have won for him an undying reputation. Sir Whitley Stokes, no mean judge of judges, has recorded his opinion in his *Anglo-Indian Codes* that no judgments in the whole series of the Indian Law Reports are more weighty or illuminating than those of the Hindu Muthuswami Iyer or the Mahomedan Syed Mahmood. From the start Syed Mahmood became what might firstly be called a *persona grata* with litigants. His broad-mindedness, his sense of equity, his keenness to do justice as between parties, became known not only to the practitioners

in his Court, but also to the general public outside. Sir Tej Bahadur Sapru, writing of him as a Judge, says :

Perhaps the question to be asked in these days about a judge ought to be, does he do the justice which the law allows him to do? This is not altogether a reproach to modern law. For a greater degree of certainty of procedure and results is not purchased too dearly at the price of occasional miscarriages of justice which are condemnable but all the same unavoidable. And, indeed, as remarked by one of the most eminent English Judges—the highest justice consists in following law. We may now ask whether Mr. Mahmood was a just judge. I, for one, think, and I believe this is the general impression of the profession and litigants, that he always endeavoured to do justice—at least so much justice as our law is capable of allowing a judge to dole out. His innate sense of justice revolted against some of the absurdities and imperfections of our law, and though he did not deem himself at liberty to transgress the four corners of a statute, he could not at times forbear recording his protest against them. Indeed, whenever it was possible, he would endeavour to reconcile the inelastic language of codified law to broad principles of justice. I will give an instance of this. In the year 1891, the following question was, at his recommendation, referred to the Full Bench of the Court: "Can an appellant who is in jail, and who has presented his appeal through the officer in charge of the jail in which he is confined, be said not to appear so that he may be heard within S. 423 of the Criminal Procedure Code, when by reason of his confinement in jail, he cannot appear, and is without means to instruct a pleader to appear for him?" In a singularly able and exhaustive judgment which lays before us the innermost springs of his mind, he dwelt at length upon the maxims *audi alteram partem* and *ubi jus ibi remedium*, showed that they were maxims of what he happily styled as "human jurisprudence", referred to Seneca and an Urdu poet to show that the absolute necessity of hearing an accused was as much a part of the Roman's creed as of the Indian's, and ultimately held that it was not enough that notices should be served on a prisoner but that it was also imperatively necessary that he should be heard in appeal either in person or through a pleader. The Chief Justice, Sir John Edge, and Straight and Young, *J.J.*, took a contrary view. I quote below a passage from his judgment where the impassivity of the Judge warms up into the passionate eloquence of an advocate pleading for justice. "Having so far dealt with these aspects of the case, as they have appeared to me both in point of law and upon points which I think have even higher basis than that doubtful phrase, I think it is necessary for me to say that if it is true that the law of British India makes it possible for me, sitting here as a Judge, in the first place, by dint of my writ to order a

person to be imprisoned and tied by the chain, then in the next place to require the mockery of asking him to attend when I, by dint of the exercise of my own power, have made it impossible for him to attend and then have the solemn mockery of having his name called out; if this is the law of British India, I hope the sooner it is abrogated, the better." It is but too true that this is the law of British India, and the hope so warmly expressed by him remains yet unfulfilled. It may not be without interest to note that Mr. Justice Hill, who was then a leading member of the Allahabad Bar, and who appeared as *amicus curiae* in the case from which I have quoted above, is reported to have lately, from his seat on the Calcutta Bench, made similar observations with respect to the hardship of the lot of undefended prisoners, and that in England at least a Bill for providing for the detention of poor prisoners is just now on the table of the House of Commons. One of the most cultured of English Judges, Lord Justice Bowen, is reported to have observed in the course of a lecture at a meeting of the Law Society: "Law is the application of certain rules to a subject-matter which is constantly shifting. What is it? English life! English business! England in movement, advancing to a continuous future. National life, national business, like every other product of human intelligence and culture, is a growth—begins far away in the dim past, advances slowly, shaping and forming itself by the operation of purely natural causes." Of course he was speaking of England and English Law; but the same remarks may be, *mutatis mutandis*, applied to India and Indian life. It may be said that a Judge is neither a legislator nor a social reformer, that his proper business is to apply the law *as it is* to the facts before him. I think it is no longer considered a legal heresy to say that Judges do at times make law. The theory of judicial legislation would not have so clearly found its classification among the Fictions of Law, but for the bold exposition of Sir Henry Maine in his *Ancient Law*. That Mr. Justice Mahmood himself was prepared to take a broader view of his position as a Judge is to my mind apparent from many of his judgments. The legislature has guaranteed to the Hindus and the Moslems the application of their respective personal laws in some matters, and it can be by no means easy to answer the question whether in a state of society which is entirely different to what it may have been, say, some seven centuries back the ancient laws are to be applied, irrespective of any changes that may have come on during this interval. As to how Mr. Justice Mahmood would answer this question, I cannot do better than give a few characteristic extracts from some of his judgments. In one of his earliest judgments (*Indar Kuar v. Lalla Prasad Singh*, 4 All., p. 541), he addresses himself to a discussion of the limits of a Hindu widow's powers of alienating the property to which she succeeds on her husband's death. After pointing out that the original Shastras knew no such

thing as what is now technically known as Legal Necessity, he observes : "But this extension of the original doctrine seems to have arisen from the exigencies of modern life rather than the precepts of Hindu law and to have originated in the principles of equity which could not be disregarded in administering an ancient law and adapting its *behests to the present conditions of life in British India.*"

A still more remarkable passage showing the attitude of his mind towards the manner in which ancient laws ought now to be interpreted, occurs in another judgment which he delivered several years later. It is a fair sample of his style and erudition and it has been followed in other Courts also. The question in the case was whether the widow of a Hindu son who had died in his father's lifetime could sue her husband's brother who had inherited the property from his father for maintenance. After repelling the argument that there was no legal obligation on the defendant to give any maintenance to the plaintiff, he observes :

But because the case is not altogether free from difficulty and also because our judgment in this case will go very near the boundary of what is sometimes described as *judicial legislation*, I am anxious, before concluding my judgment, to refer to some considerations of good policy from which I confess my mind has not altogether been free in determining the question raised in this case. When I say 'good policy' I do not refer to any political exigencies of the population of the territories under the jurisdiction of this Court. I use the phrase in the sense in which such a phrase should be understood in judicial exposition of the law, that is, in the sense of those broad principles which ordain the basis of the rule of justice, equity and good conscience, upon which we, as Judges of the Court which exercises the combined jurisdiction of a court of law and a court of equity, must act in cases where there is no specific legislative provision in the statute law or the original texts of an ancient system of jurisprudence which we are bound to administer do not furnish an express authority in specific terms.

Commenting on this, Sir Tej Bahadur wrote in the same article :

That Mr. Justice Mahmood had high authority for thus interpreting the law would be obvious to those of us who have watched

the course of English decisions in recent years. The enormous expansion of trade, and the consequent competition in the market, have led to a stage of economical progress where all attempts at interfering with open competition are strongly resented in England. The policy of *laissez faire* has so powerfully asserted itself in that country that even judicial tribunals have felt themselves called upon to adapt the theory of wrong to modern conditions of business life. In recent times the spirit of liberalism in law—a spirit certainly to be welcomed, considering that the law is pre-eminently conservative in its tendencies—began with the well known decision in the case of the Moghul Steamship Company and has been working through a long series of decisions, though not always in an equally luminous manner. The growth in the powers of trade unions in England has also led the judges there to seriously consider the legal bonds of individual liberty and its relations to what may be called the collective pressure of trade arrangements. The rule may not have been explained with equal clearness in *Allen v. Flood*, *Quinn v. Leathem* and the Taff Vale case. But it is obvious that there is a strong tendency among Judges in England to recognize the current forces working upon the social and economic progress of their country. And indeed law and judges might be curses in the guise of blessings were they always to act as drags on the upward march of society. It must be said to the credit of Mr. Justice Mahmood that at least with respect to the Hindu law, he, like the late Mr. Justice Nanade of Bombay, always attempted to reconcile the wisdom of ancient sages to the mixed civilization of their descendants.

In the Full Bench case of *Jafri Begam v. Amir Muhammad Khan* when the Chief Justice and Justices Oldfield and Brodhurst merely answered the questions referred to them in the affirmative or negative without stating more Mahmood, J., felt himself bound to reserve and deliver a fuller judgment after consulting the original authorities on Muhammadan law on the question. In doing so, he said :

The only means of information consists of books of reference which are either incomprehensive compilations or abbreviated translations and in some cases translations of translations. Another difficulty is that the language of the highest Courts in India is not the language of the people and consequently the vast majority of advocates who appear in those Courts are those who must speak English and who, as a matter of fact, are not likely to refer to the original Arabic authorities. . . . I reserve the grounds of my

conclusion in the hope that I may perhaps be able to make my judgment of such a nature as might in some measure help to remove the existing cloud of judicial exposition on these important questions.

And a month later he delivered an elaborate judgment dealing not merely with the case-law but explaining the principles of inheritance under Muhammadan law as expounded in the Koran and the authoritative commentaries thereon.

His dissenting judgments in several Full Benches have the honour of being adopted by other High Courts as embodying the correct legal propositions. Particularly notable among them are the cases of *Jamaitunnissa v. Lutunnissa* (reported in I.L.R. 7 All. 606), *Deokinandan v. Sri Ram* (reported in I.L.R. 12 All. 234) and *Seth Chitor Mal v. Shib Lal* where Mahmood, J., examines the important principles of the law of *res judicata*, of the law of pre-emption and of the law of salvage respectively. In the course of the judgment in *Deokinandan v. Sri Ram*, he said, after examining the original texts in Arabic dealing with the Muhammadan law of pre-emption and also a previous decision of his on the question :

I held then as I hold still that the right of pre-emption in its inchoate form exists in the pre-emptor antecedently to the sale of which he complains, or if it were not so, jurisprudence would decline to recognize that a right which did not exist at the time of the sale is created by the very sale which is complained of as an *injuria* to the right which that injury itself created. I did hold in that case as I hold still that the right of pre-emption is nothing more or less than the right of the pre-emptor to be substituted for the purchaser in the sale in respect of which pre-emption is sought to be enforced.

It is needless to multiply authorities on this point, for the authorities which I have already cited render the contention wholly untenable, that under the Muhammadan law of pre-emption the ownership of the pre-empted property vests in the successful pre-emptor having actually enforced his pre-emption by mutual consent or by fulfilling the requirements of a decree of Court. Equally untenable under that law would be the proposition that during the

interval between the pre-empted sale and the actual enforcement of pre-emption as above-mentioned, the pre-emptor is entitled to the profits of the pre-empted property of which he was not till such enforcement the actual owner.

That such is the rule of the Muhammadan law of pre-emption in such cases, I have absolutely no doubt; and if I have referred to the original authorities at such length it is only out of deference to the contention which was seriously urged in the course of the hearing that such was not the rule of the Muhammadan law of pre-emption.

And the learned Judge proceeded to show :

- (1) That there is no law of pre-emption in the Hindu law.
- (2) That entries in the pre-emptive clause of *Wajib-ul-arz* are good *prima facie* evidence of the existence of pre-emption in the village to which such *wajib-ul-arz* relates.
- (3) That such custom must in the absence of anything to the contrary be taken to be founded on and co-extensive with the Muhammadan law of pre-emption.

The judgment proceeded to point out that the conclusions of the majority in the Full Bench case of *Chowdhree Brij Lall v. Rajah Goor Sahai* attributing the origin of pre-emption in village communities to an evolution of the Hindu law relating to the joint Hindu family system. And the exposition of the subject is as interesting and scholarly as the pages of Sir H. S. Maine's "Early Law and Custom".

Justice Mahmood's conceptions of equity, justice and good conscience were in some respects materially different from those of many other Indian Judges; and it was perhaps because of these conceptions that he was enabled to grapple with the modern conditions of Indian life.

Equity with him was neither a roguish thing, nor a deceitful will of the wisp. On the contrary he could always trust to it for lighting up some dark corners in our law. But he at the same time clearly realized that it was by no means desirable to import wholesale those equitable maxims or rules which are the growth of ages in England and which are peculiarly suited to English life and English Courts. Perhaps he was not always successful in what may be called the process of adaptation; perhaps this very method led him to adopt views which did not always command universal assent. As instances of the inconsistencies in the results flowing from his methods, I may mention two of his most celebrated judgments, the one on a question of Muhammadan Law and the other on a question of Hindu Law. In *Gobind Dyal v. Irayatulla*

(7 All., p. 775) where his powers of reasoning display themselves at their best, it was this very doctrine of equity, justice and good conscience which led him to invest the right of pre-emption under the Muhamimadan Law with the sanctity of a religious institution, a view to which exception was taken then and has been taken since. In *Ganga Sahai v. Lekhraj Kuar* (9 All., p. 253) on the contrary, where the Muhammadau Judge traces back the history of the Hindu law with all the avidity of an antiquarian and discusses the subtle doctrines of the Hindu law with a depth of reasoning which is truly astonishing, he relied upon equity, justice, and good conscience for prescribing the limits of the doctrine of *factum valet* in its application to cases of adoption under the Hindu law in a manner which may be said to have infused a spirit of liberalism into our law in so far as it secures the position of an adopted son against a claimant who may be disposed to question his status as such, because the adoptive father may have omitted to observe some of the rules and ceremonies prescribed by the ancient sages.

In *Seth Chitor Mal v. Shub Lal*, he pointed out the duties of a Judge in India in these terms :

It is perfectly true that in dealing with questions not covered by express legislative provisions, the Judge must not forget that he is a Judge and not a legislator. But it is equally true that a Judge sitting in one country is not to administer the laws of another country. To the English system of jurisprudence, common law and the principles of equity administered in the Courts of Chancery in England, India owes a vast debt of gratitude for the improvement in the administration of justice. How far the principles of the English system have been imported into India is apparent not only from our Statute-book but also from the vast body of decided cases which I may describe as judge-made law: Notions of justice, equity and good conscience are necessarily incapable of exact and exhaustive definition, and in administering them the Judge has to take exceptional care whether he is or is not importing foreign notions of equity in one country over the notions of another.

And he extended the equitable doctrine of salvage beyond the sea-shore to land perils also, although in England, Judges had restricted the doctrines to sea perils only.

As an Indian Judge and a member of a Court which deals with disputes of parties living in a land the vast majority of whose inhabitants have never seen the sea, and are therefore not in a position to appreciate the dangers arising out of the upheaval of the billows of the ocean, I find it difficult to accept over questions of maritime salvage liens that any sanctity can

be attached to the perils of the sea as to place them upon a separateuristic footing from similar perils which arise on the land.

I respectfully think that the English law upon the subject is an unreasonable law so far as it restricts the *salutary* doctrine of salvage purely to maritime salvages. . . . That such a rule rests upon sound considerations of equity I have no doubt. But why that equity should stop at the sea-shore, I frankly and respectfully confess I am unable to conceive, for I cannot help feeling that doctrines of equity are no more governed by the peculiarities of the sea than by the peculiarities of the land. A legislative enactment may indeed modify the operation of equitable doctrines by restricting them either to the sea or to the land, but as I have already said, in British India no such legislative interference has taken place, and so far as this part of the country is concerned, the broad principles of equity, justice and good conscience must prevail under statutory mandate, regardless of foreign systems, though of course they may be referred to for purposes of comparison.

In *Binda v. Kunnsilia* (reported in I. L. R. 13 All. 126) Mahmood, *J.*, upheld the right of a Hindu husband to sue for restitution of conjugal rights; and in an elaborate judgment he examines the original texts on Hindu law to ascertain accurately the Hindu law conception of conjugal life. In the course of that judgment, he said :

I am of opinion that there is ample authority in Hindu law to show that it is the duty of a wife to live with her husband in conjugal cohabitation, discharging such functions as the domestic law of the Hindus assigns to her. These authorities are collected in Colebrooke's "Digest of Hindu Law", Volume I, Book IV, Chapter I and Chapter II, and, when read together, furnish a very interesting and instructive picture of the domestic conjugal life of the husband and wife as contemplated by the Hindu law. . . .

To this extent, indeed, it cannot be seriously contended that the right of conjugal cohabitation is not a legal right under the Hindu Law of Marriage, mutually available to the husband and the wife. What has been, however, seriously contended is that, notwithstanding such rights being legal rights under the Hindu law, that system does not prescribe and does not contemplate any remedy when either the husband or the wife infringes the obligations which those rights create, and therefore a suit for restitution of conjugal rights is unknown to the Hindu law and cannot be maintained in our Courts.

This argument was urged before the Bombay High Court by Mr. Telang, and Mahmood, *J.*, examines the

Hindu law texts to refute the arguments of Mr. Telang in that case and concludes :

I think I have said enough to show that according to the spirit and letter of the Hindu law itself, enforcement of conjugal right by judicial authority awarding restitution does not fall beyond the scope of the King's functions and therefore not beyond the jurisdiction of the Civil Courts in modern times.

Speaking of the Allahabad High Court Judges, a South Indian lawyer says :

The judgment of Mr. Justice Mahmood in *Janki v. Nandaram* elaborates the theory of moral obligation under certain circumstances developing into legal obligation on the death of the owner as, for instance, the duty of a person to maintain certain near relations like the daughter-in-law. In *Deoknandan v. Sri Ram* he traces in a very elaborate judgment the history of the law of pre-emption in India and discusses whether there is any counterpart of it in Muhammadan law. The judgment in *Binda v. Kannelia* as to restitution of conjugal rights is very instructive. His judgment in *Jafri Begum v. Amir Muhammad Khan* as to the theory of the Muhammadan law of succession will interest not only students of Muhammadan law but all students of jurisprudence. The merit about Mr. Justice Mahmood's judgments is their discussion on first principles and in the light of comparative jurisprudence and not merely in the light of precedent and authority. His view on *res judicata* as to issues in *Jawaiitumissa v. Lutfunnissa* is worth considering even to-day though he was in the minority and though his point of view has not received acceptance.

We have seen how Syed Mahmood approached questions arising under the uncodified laws of Hindus and Mahomedans. How did he construe Codified Law?

Here is what Sir Tej Bahadur Sapru says :

It is a matter of common experience that statute law is less flexible than that which has not been compressed in the form of codes, and indeed it would be more than questionable whether it is an advantage to have codes without having a system of their revision at regular intervals. In India where codification has been tried on such a large scale, much of the results of the Legislature's efforts is bound to depend upon the construction to be placed on Acts and Codes : "The golden rule of construction" was very lucidly explained by Lord Herschell in the well known English case, *The Bank of England v. Vagliano*. Mr. Justice Mahmood also not unoften acted upon this rule but inasmuch as the workmanship of our Acts and Codes hardly

comes up to that degree of perfection which is generally the characteristic of English statutes, he seems to have felt himself justified in tempering the rigour of that rule by discovering the intention and policy of the Legislature and the mischief which it intended to cure. As an illustration of this statement, I may mention the case of *Jadu Rai v. Kanizak Husain* in which he, upon a construction of Section 191 of the Code of Civil Procedure, ruled that the successor in office of a Judge who had heard the evidence in the case, was competent to hear arguments and deliver judgment. In his exceedingly luminous judgment he first refers to the rule enunciated by Baron Parke in *Becke v. Smith* which was in effect the same as that more recently laid down by Lord Herschell and then he delivers himself thus:

I have before now said, sitting as a Judge of this Court, that the general principles of Lord Coke's celebrated dictum in *Heyden's case* are applicable to the interpretation of our own Indian Enactments, and that in construing the rules of such departments of law as Civil Procedure which has repeatedly been the object of repealing, amending, and consolidating legislation, it is important to consider the previous state of the law, the mischief and defect which that law did not provide for the remedy which the Legislature adopted to remove the mischief, the true reason of the remedy, and (to use Lord Coke's own words) "then the office of all the Judges is always to make such construction as will suppress the mischief and advance the remedy and suppress subtle inventions and evasions for continuance of the mischief and *pro privato commis lo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act *pro bono publico*". Here again we find him calling to his aid the basal principle of equity which as Wooddesdon tells us is "a judicial interpretation of laws, which presupposing the legislator to have intended what is just and right, pursues and effectuates that intention".* This principle supplies us the keynote of his decisions on Indian Acts and the careful reader will hear its echoes in perhaps the largest of his judgments on the construction of some sections of an Indian Act. I refer of course to *Matadin Kasodhan v. Kasim Husain* (13 All. 432), in which he delivered a dissentient judgment. That the decision of the majority of the Allahabad Judges has made the litigation about mortgage transactions more complex than it used to be before is, I believe, the general experience of the profession, and that judicial opinion in the High Court itself seems now to be doubtful as to its soundness may be gathered from the occasional remarks of Judges whose respect for it now would seem to rest mainly on the ground that it is a Full Bench ruling.

* It is noticeable that the Legislature itself removed all doubt on the question decided by Justice Mahmood by a subsequent Act (VII of 1888, S. 18).

Syed Mahmood gave abundant proof, as a Judge, of his profound legal acumen and breadth of views. The following from Sir Tej Bahadur's critical observations on his work as a Judge will illustrate this aspect of his greatness :

Who, for instance, in the profession has not read with admiration his judgment in *Chittor Mal v. Shih Lal*, in which he points out that a person paying the revenue of a village on behalf of his co-sharer, acquires a lien on the latter's share in the village similar to what is created by salvage under the maritime law? It is interesting to find that two other Indian Judges of great eminence, Sir Bhashyam Ayyangar and Sir Subramaniya Aiyar of Madras have recently adopted the same view. A common complaint against Mr. Justice Mahmood is that his judgments were prolix. It seems there is an element of truth in this charge, but at the same time it cannot be forgotten that he was appointed Judge at a time when the Legislature had just passed two important measures, and when some other Acts, such as the Indian Limitation Act and the Specific Relief Act, not to mention others, had not been long in force. The Civil Procedure Code and the Transfer of Property Act were passed about the time that he was brought on the Bench at Allahabad and they had to be explained. A large number of his earlier judgments relate to questions arising under these enactments, and it will require much hardihood to maintain that he has not done much to remove many doubts and elucidate many obscure questions which cropped up under them. If however to be copious is a fault in a Judge, he requires no special apology as he shared it in common with other Indian Judges such as Sir Barnes Peacock, and Dwarka Nath Mitter, MinthuSwami Aiyar, Holloway, and West, *J.J.*, who have left permanent marks of their great talents upon our law. At all events copiousness which is instructive and interesting may well be preferred to brevity which, so far from always being the soul of judicial wit, is very often a source of obscurity. In our own times who would not prefer spending three hours over a single decision of Sir Bhashyam Ayyangar to spending one over half a dozen stunted products of judicial parentage which sometimes crowd the pages of the Law Reports.

AS HE APPEARED IN COURT

How did he appear in the Court itself to practitioners before him, quite apart from how he appeared in the pages of the Law Reports? Happily we have picture of

it in the following extract from Sir Tej Bahadur Sapru's reminiscences of him in the *Hindustan Review*:

Tradition which is as much a part of all Bar Associations as the bulky volumes of Reports and text-books, tells us that he joined dignity to courtesy and abounded in patience with the confident 'leader' and the tremulous 'junior' alike. Thoroughness was his watchword as it is the watchword of all scholarly minds. His mind was richly endowed by nature and assiduously cultivated by himself, and his judgments—exquisite pieces of legal composition—will live as long as the present system of our jurisprudence will continue to be a living factor in our polity.

RESIGNATION FROM THE BENCH

The circumstances which led to his resignation of the post of Judge, in which he had shone with such great honour to himself and his country are too sad to narrate. Apart from an insidious—nay accursed—habit to which he had fallen early a prey to, it was whispered at the time that green-eyed jealousy as well had done its part. To whatever cause it was due to, his resignation (practically an enforced one) did irreparable injury not only to himself personally but proved a great loss to the High Court Bench. If the Allahabad High Court is famous to-day it was largely through the association with it of eminent Judges like Syed Mahmood. Though one of the latest High Courts to be created, it soon attained, because of its connection with Judges of the type of Syed Mahmood, a celebrity all over India equal to, if not greater than, that of any other older and longer established High Court in India. However it came about, Syed Mahmood's resignation was more than a public calamity. Personally it proved to him disastrous. He retired to Aligarh and lived under his paternal roof. He interested himself in College work. He traced out a financial fraud perpetrated by one of its clerks. He was nominated a Member of the N. W. P. Legislative Council and at it he

worked, not as a modern member does, but rather in a manner becoming a retired Judge. But soon Syed Mahmood found the truth of the legal saying: *Protectio trahit subjectionem et subjectio protectionem.* (*Protection involves dependence and dependence protection.*) Ostensibly on legislative business at Allahabad, he once for all took leave of his father's home. He settled down at Lucknow, having joined the Bar there.

AT THE BAR

His second innings at the Bar cannot be better described than in the words of the late Dr. Satish Chunder Banerji, who was his "devil" at the time at Lucknow. In an article in the *Hindustan Review*, published soon after the death of Syed Mahmood, he says:

For some time after his enrolment, Mr. Mahmood no doubt had a very busy career as an advocate. I had to be constantly at his side and so I know that though his charges were very high, his hands were always full of work. But alas! Mr. Mahmood was then not what he once had been. We all know what lost him his judgeship. The same accursed habit lost him his practice too, and that pretty sharp. He had succeeded in removing himself from his father's restraining and beneficial influence, and he fell back to his old course. His habits became irregular, he became incapable of sustained work, and his clients fell off. Not only were his own habits irregular, but they were calculated to cause the greatest inconvenience to those who had to work with him. He would sometimes work day and night and at other times not work at all. I can recall many a day when he has positively refused to read the brief that I had prepared for him, and then on the following morning has called me up at 4 to explain to him the points in the case which he had to argue in Court that day. I can also recall days when owing to his erratic habits I could scarcely make time for my breakfast, and when he took hardly any solid food at all. Mr. Mahmood had inherited an iron constitution, so it did not much matter to him. But under the strain of these irregularities my health broke down and I left Lucknow finally in September, 1896. I was down then with an attack of high fever, but I still remember with loving gratitude how Mr. Mahmood who had his bed in another room would come 5 or 6 times in the night to feel my pulse and stroke my forehead.

AS A MAN

The following is Mr. Banerji's general impression of Syed Mahmood as a man. It cannot be improved upon :

The first thing that struck one about Mr. Mahmood was his culture. He was not only a well-read and well-informed man, but he was a thoroughly cultured gentleman. About his erudition as a lawyer it is not for me to speak. I may however note in passing that I have heard Mr. Mahmood observe that a judge of fact is greater than a judge of law, and imply that he had seen more of a judge of law than of fact. He used to express the highest admiration for Dwaraka Nath Mitter and Muthuswami Iyer, and once told some Muhammadan gentlemen in my presence that he was not worthy to untie the latchets of the shoes of those two eminent judges. He possibly ranked himself third in order of merit among Indian judges who have graced any High Court Bench. But I was referring here to his attainments generally and not merely as a lawyer. He was very fond of poetry and would pass whole evenings in the recitation and criticism of choice Persian and English poems. Among English poets he was particularly fond of Gray and Tennyson, and had himself composed some verses in the characteristic manner of these masters. He felt attracted by the *Sufi* doctrines, and was probably in sympathy with the Vedanta philosophy. He was at any rate prepared to appreciate the full greatness of Hindu thought and of Sanskrit literature, and when at Mr. Beck's suggestion the chair of Sanskrit in the Aligarh College was abolished, it was principally through Mr. Mahmood's efforts that the old Pandit was reinstated. Mr. Mahmood wrote a bad hand and so preferred to dictate to an amanuensis. This probably accounts to some extent for his prolixity as a writer. Besides, he had a partiality for long rolling sentences and had an eye to 'style'.

HIS POLITICAL VIEWS AND SYMPATHIES

The same writer's description of his political views and sympathies will be widely appreciated. He says :

Mr. Mahmood was a man of liberal sympathies and a true friend of progress. He had the highest regard for Mr. A. M. Bose (he would fondly refer to him as "my tutor when I was an undergraduate at Cambridge"), and his friends among the Hindus were, I believe, quite as numerous as among the Muhammadans. He certainly did not view the Indian National Congress with 'dread,' as some of his co-religionists who contribute to the *Aligarh Institute Gazette*, profess to; and I have reason to believe that, if Mr. Surendra Nath Banerjee and Mr. A. M. Bose had approached him properly, he might have presided over the annual deliberations of that national body. He once

told me at Lucknow that he was seriously thinking about this matter, that he had sympathy with the movement, and that he was prepared to accept many of the resolutions adopted at meetings of the Indian National Congress. Unfortunately not having studied the science of politics with any thoroughness I do not care to dabble in politics, and so I did not push the matter any further. But that Mr. Mahmood was a much more clear-sighted man and had the true cause of his mother-country more deeply at heart than many self-styled politicians, both Hindu and Musalman who rush to print or clamber up the platform, I have not the least doubt. Mr. Mahmood was a proud man, he was a hot-tempered man, he had his fixed ideas (who has not?) but he had no patience with hypocrisy, with pettiness, with servility and knee-truckling. I heard from father 18 years ago that Mr. Mahmood used to deplore the absence of a national leader in India and expressed a hope that Bengal might one day give to the country such a leader. True it is that distance lends enchantment to the view! There can be no doubt, however, that he would have liked to see perfect fellowship established between Hindus and Muhammadans, and he would often say to me: "You are a Brahman among Hindus, I am a Syed among Musalmans; let us join hands together as of one kin."

HIS PERSONAL CHARACTERISTICS

Syed Mahmood's liberality is well known. He agreed with the saying: "What you spend on a friend and comrade is gained." As Dr. Banerji says:

One word I must say here about Syed Mahmood's liberality and his generosity of heart. Nobody, I believe, ever approached him with a petition who did not get more than he wanted. Mr. Mahmood seems to have acted upon the theory that money was earned only with the object of being given away and his cheque-book was always at almost everybody's service. Another thing very characteristic about him was his hearty laughter. He was a very jovial man, whose heart was quite as large and as tender as his intellect was acute and bright. You could not have a better and kinder friend.

HIS WRITINGS

A few words may be added about his literary remains. Syed Mahmood translated his father's *Life of Mahomed*, a book full of interest even now. The translation is a model of its kind. It is neither literal nor liberal; but well strikes the happy mean and is exceedingly readable. His *History of English Education in India* deserves to

be reprinted, both for its views and for its brilliance. It deserves wider attention to-day more than ever. Syed Mahmood, in 1882, revised for Sir Frederick Pollock his "Indian Civil Wrongs Bill" drawn up by him at the instance of the Government of India. He furnished Sir Frederick—as he gratefully acknowledges—with a careful memorandum, especially on the earlier parts of the draft and also gave him many "good suggestions" in regard to the Bill. The Bill of course is not yet law, but it is still appreciated as a good working text, especially in the mofussil. When it is actually adopted, India will have owed it as much to Sir Frederick as to Syed Mahmood, as the former would be the first to acknowledge. Mahmood had also published his *Law of Evidence in British India* in Hindustani and edited Mahomedan law books in Arabic. It is said that he also began a *History of Islam*. His qualifications for this were indisputable, and the great attention he paid to studies in Islamic philosophy, law and education won him the esteem of his co-religionists to a degree not excelled by any, save his illustrious father, Sir Syed Ahmed Khan. And when, on May 8, 1903, Mahmood breathed his last, his co-religionists and indeed the whole country fell into a profound grief. His fellow-countrymen felt that in him passed away a great scholar, reformer and judge, the illustrious son of an illustrious father. It is permissible to speak of Syed Mahmood in the words of Livy (as applied to Portius Cato): "In this man there was such force of mind and character that in whatever country he had been born, he would have been bound to have his fortune for himself."

SIR ROMESH CHUNDER MITTER

SIR ROMESH CHUNDER MITTER was the first Indian to be appointed Officiating Chief Justice of an Indian High Court. He was born in 1840 in the village of Rajarhat-Bishnupore which is about eight miles to the east of Calcutta. He was the youngest son of Babu Ramachunder Mitter, who was the head clerk of the old Sudder Dewany Adawlut and who later on became a Sheristadar of the Adawlut, and who at the time of his death held the appointment of the Deputy Registrar of that Court.

Romesh Chunder Mitter was educated in the Colootola Branch School which later on came to be known as the Hare School, Calcutta. Passing the senior Scholarship Examination in 1857, he obtained the First Grade Scholarship in 1858. He was a student of the Presidency College at Calcutta during his collegiate course and took his B. A. degree in March 1860 and his B. L. degree in 1861. He was enrolled as a *vakil* of the Sudder Dewany Adawlut which soon afterwards was succeeded by the High Court, Calcutta. He began practice as a pleader when he was only twenty-one.

According to the *Calcutta Weekly Notes*, "he gave early promise of a brilliant professional career". He edited a report known as "Haye's Report" during the years 1862 and 1863. Gradually he rose to a front rank in his profession and commanded a large and lucrative practice;

and with the elevation of Babu Dwaraka Nath Mitter to the High Court Bench, Romesh Chunder Mitter came to be considered the leader of the *vakil* section of the Calcutta Bar ; and when a vacancy in the High Court Bench was caused by the death of that Judge in 1874, Romesh Chunder Mitter was appointed to his place ; he remained on the Bench till 1890 when, for reasons of health, he had to retire at the early age of fifty.

In the course of the address presented to him by the *Vakils* of the Calcutta Bar on the eve of his retirement, it was pointed out :

Your judicial career extending over a period of sixteen years has been characterised all through by great ability, strong common sense, thorough independence, untiring patience and uniform courtesy. You have always enjoyed the fullest confidence of all classes of suitors of whatever race or creed, and no good cause, by whomsoever supported or opposed, has ever suffered in your hands.

Your distinguished abilities were recognised by the Government of Lord Ripon in your appointment as Acting Chief Justice of Bengal, and by the Government of Lord Dufferin in your selection as a member of the Public Service Commission ; your services in both these capacities commanded universal approbation.

Your successful and brilliant career reflects credit on the profession to which you belonged and will ever be an illustrious example to that body.

Your retirement is a public misfortune and a heavy loss to the cause of judicial administration. We feel it the more keenly as it has been prematurely brought on by ill-health.

In the reply to that address, Sir Romesh Chunder Mitter gives expression in these words to his feelings of diffidence at the time when he was chosen to fill up the gap in the High Court Bench caused by the untimely death of Mr. Justice Dwaraka Nath Mitter :

It is about seventeen years ago that I was selected from your body to fill up the vacancy in this Court, caused by the death of my illustrious predecessor Mr. Justice Dwaraka Nath Mitter. At that time I was comparatively young in age and experience ; naturally therefore I felt a sense of diffidence in my ability to

discharge duties, very responsible duties of a judge of the Highest Court in the country. That sense of diffidence was very much deepened by the circumstance that I was selected to fill up the gap which, those who like myself knew Mr. Justice Dwaraka Nath Mitter well, will bear me out, could not be filled up well for some time to come.

This diffidence was partly due to the admiration which Sir Romesh Chunder Mitter had for Mr. Justice Dwaraka Nath Mitter, and was partly also due to the fact that he was appointed to the highest judicial tribunal in India at an early age of thirty-four. However, as Sir Romesh Chunder himself has pointed out, he had "confidence in himself that he would spare no pains to do his work honestly and to the best of his ability". As he said in the course of the reply to the address on his retirement, he was "always actuated by the single desire of doing his work honestly and to the best of his ability". "Thorough" was his watchword. During his long and distinguished career on the Bench, he administered justice on broad and equitable principles, and if his health began to fail at an early age of 48, it was entirely due to overworking himself in the conscientious discharge of his duties. We find from the Law Reports that he took a leading part in many Full Bench decisions, and as he was much at home with the administration of criminal and revenue laws as with the administration of civil law. It is said of him as a judge: "He did not shirk work because a case threatened to take up a long time, and although he never permitted members of the profession to take up time by unnecessarily lengthy arguments, he was always patient with them and courteous."

In 1882, being the senior-most puisne Judge, he was chosen to officiate as Chief Justice during the absence on leave of Sir Richard Garth, Chief Justice. This was in those days considered a rare compliment to his judicial

work, because it was the first occasion when an Indian was chosen to occupy the responsible place as the head of the judicial administration in the Province. In 1886, he was again chosen as Officiating Chief Justice. In this connection it would be worth while to emphasise the injustice of the provisions of the Government of India Act, that the Chief Justice of the High Court should be a Barrister of England or an Advocate of Scotland. But for the technical difficulty that stood in the way of Sir Romesh Chunder, he would have been appointed permanent Chief Justice of the High Court at Calcutta.

His eminence as a judge can be gathered from a consideration of a few of the many decisions of his that are found reported in the authorised series of *Indian Law Reports* from its commencement to the 17th volume of the Calcutta series. These judgments are invariably characterised by a lucidity of exposition, an appreciation of the equities of the case and a familiarity of the intricacies of the evidence in the case and the law applicable thereto. Particularly noteworthy are his many decisions in the law of limitation, on civil and criminal procedures and on the law relating to tenures and landholdings in Bengal. Many of the novel questions under the then newly enacted Bengal Tenancy Act came up before Benches of which he was a member and his decisions helped not a little in setting some of the vexed problems on occupancy rights and on under-tenures. His decisions on the Hindu law commanded considerable respect from the Members of the Judicial Committee of the Privy Council; nor was this respect confined to his decisions on the Hindu law alone. For example, in *Gangapershad Sahu v. Maharani Bibi* reported in I.L.R. 11 Cal. 379, Sir Arthur Hobhouse, re-affirming the judgment of the Calcutta High Court, stated :

With respect to the judgment of the High Court, their Lordships agree with Mr. Justice Romesh Chunder Mitter in his construction of the bond. . . . They agree with Mr. Justice Mitter in thinking that it provided for payment of interest up to the date of actual repayment. . . . They agree with the view taken by Mr. Justice Mitter that there is no case made on behalf of the lender to show that such a loan was for the benefit of the infant's estate Their Lordships disbelieve that more complete justice could be done in this case than has been done already.

And in another case, when the Privy Council affirmed the reversing decision of the Calcutta High Court, Lord Markswell, in the course of the judgment delivered by the Board, said :

On appeal to the High Court this judgment was reversed.

The contentions of the respective parties and the grounds of the judgment are so clearly stated by Mr. Justice Romesh Chunder Mitter that their Lordships think it well to give the following extracts from his judgment :

An early decision of his in Hindu law extended the doctrine that an estate once vested cannot be divested to the question of adoption by a Hindu female where the estate vested in a person other than the adopting female at the time of the adoption; and this extension has been accepted by the Privy Council as a valid proposition under the Hindu law and on general principles of justice, equity and good conscience. In the course of his judgment in that case, *Kally Prosanna Tugore v. Gocool Chunder Mitter* reported in I. L. R. 2 Cal. 295, he said in reply to an argument in favour of such divesting :

If this proposition could be established, it would lead in many cases to very mischievous and inconvenient results. There is no limitation of time within which a Hindu widow is bound to exercise the right of adoption, and there might be cases not of infrequent occurrence, in which persons rightfully succeeding to properties as heirs might after a long lapse of time be suddenly called upon to relinquish their possession in favour of a person adopted into the family of the last owner many many years after the death of the latter. A proposition so startling as this is, ought to be established by the clearest possible authority. No text from the Hindu law has been cited in its support.

I am aware of no authority in Hindu law books which supports the proposition that this right of ownership is subject to be destroyed by a person being brought into existence subsequently, a person who, if he had been in existence at the time when the succession opened out, would have been a preferable heir. This is opposed to natural justice and all principles of Hindu law.

He pointed out that Sir Barnes Peacock took the same view of the law:

The case of a widow adopting a son after her husband's death and thereby divesting the estate which she took upon the death of her husband without issue, is one in which only her own estate is divested. There is no case in which an estate vested in a male heir by inheritance can be divested by the adoption of a son by a widow after her husband's death, and the case of a widow divesting her own estate by the adoption of a son is not one from which inferences can be drawn by analogy as to the divesting of an estate once vested in a male heir by inheritance.

In *Narain Dhura v. Rakhal Gani* reported in I. L. R. 1 Cal. 1, Mr. Justice Mitter differed from his colleague, Mr. Justice Markby, and took a more conservative view on the question whether intermarriage between sub-castes of Sudras is valid—a question on which, later on, the Madras High Court took the view favored by Markby. The wife Radhoo in this case was of the fisherman caste and the husband of the weaver caste. In the course of his judgment, Mitter, J., pointed out:

In an ordinary case where it is established that parties have lived together as husband and wife for a long length of time, it is consonant with natural justice to presume a valid marriage between them; and I am not aware of any peculiar provision in the Hindu law which is inconsistent with such a presumption as this. But in this case there is no room for it, for the parties of different castes and a valid marriage between them is impossible unless sanctioned by any peculiar social custom governing them.

The case was remanded for proof of such custom. Markby, J., agreed to the order of remand but remarked:

I understand my learned colleague to consider that the presumption is excluded because the alleged wife is of a different caste from the husband and that unless sanctioned by custom, such a marriage is not legally binding. Upon a question of this kind, I



DWARKANATH MITTER

should hesitate greatly before I differed from my learned colleague, it being a question with which he is peculiarly well qualified to deal. I only wish to point out that no legal authority is quoted for this position. In the ancient text-books, no such authority could be found, because it is admitted (1) that in ancient times, Sudras were but one general caste or class; (2) that in ancient times the marriage of a man with a girl of a different class or caste was not prohibited. Whether the comparatively modern prohibition against intermarriage of persons of a different class or caste extends in this part of India to the modern sub-divisions of the Sudra caste or class is a matter of very great importance. The restrictions thus imposed would be numerous; and restrictions upon marriage, however convenient socially, assume quite a different aspect when recognised by the law and the law does recognise them; they cannot be ignored; but if it does not, it would be wrong to impose them, and I feel great hesitation in saying for the first time that there is a legal bar to these marriages.

In another case on the Hindu law where he had occasion to discuss the powers of a manager to bind by his alienations the interest of the adult co-sharers of the family, he laid down the law in clear and unmistakable terms after discussing the effect of previous decisions:

The result of these cases, in our opinion, is that an alienation made by a managing member of a joint family cannot be binding upon his adult co-sharers unless it is shown that it is made with their consent, either express or implied. In cases of implied consent it is not necessary to prove its existence with reference to a particular instance of alienation. A general consent of this nature may be deductible in cases of urgent necessity, from the very fact of the manager being entrusted with the management of the family estate by the other members of the family. The latter, in entrusting the management of the family affairs in the hands of the manager, must be presumed to have delegated to the said manager the power of pledging the family credit or estate, where it is impossible or extremely inconvenient for the purpose of an efficient management of the estate to consult them and obtain their consent before pledging such credit or estate.

Sir Romesh Chunder Mitter's judgment in the Full Bench case of *Hurry Mohan Rai v. Ganesh Chunder Dass* on the legal rights of a person who gives credit to a Hindu widow or other limited owner, shows that he was actuated by a very sympathetic and correct appreciation of the position of those who have to deal with owners of a

widow's estate under Hindu law. The following extract from his judgment which prevailed is a good example of his style and method of discussion :

The question before us is of a different character. It is under what circumstances a contract or a transaction giving rise to pecuniary liability, entered into by a Hindu female representing an estate, is binding upon the heir of the last male owner after her death.

It is now settled law that a Hindu widow fully represents the estate, and when the estate is pretty large, it becomes necessary to enter into various contracts or transactions with third parties in the course of its management. Circumstances may be imagined where it would be manifestly unjust to hold that a particular contract, which a Hindu-widow found it necessary to make with a third party for the benefit of the estate, was not binding upon the next heir after her death. Suppose the estate consists of Sunderbund grants in which periodically embankments are required to be constructed for their preservation.

Suppose a Hindu widow in possession of such an estate engages workmen to construct an embankment on the condition of paying for the work after it was finished; suppose the death of the widow takes place just after the work was completed. It seems to me that it would be manifestly unjust to hold that the next heir succeeding to the estate would not be bound to pay for the work done out of the estate.

On the other hand, cases may be supposed where it would be unjust to the next heir, after the widow's death, to make him liable under a particular contract, though made by a Hindu widow in the course of the management of the estate.

Suppose a Hindu widow engages a builder to make sundry improvements in the family dwelling house where there is no necessity for such improvement, and dies after the work is finished. It seems to me that it would be unjust to hold that the next heir is liable to pay for the work done out of the estate, though it is to a certain extent benefited thereby. It follows therefore that in order to bind the next heir it is not sufficient to show that the contract has conferred a benefit upon the estate; but it must be further established that the contract is of such a nature that a prudent owner in managing the estate would find such a contract necessary for the due preservation of the estate. A contract, therefore, which not only confers benefit upon the estate, but is necessary for its good management, though made by a Hindu widow, is, in my opinion, binding upon the next heir after her death.

It has been said that such outgoings as the costs of repairing houses appertaining to the estate must be met from the gross income of the estate. There is no doubt that it is so. But that circumstance

cannot affect the rights of a third party who has a valid claim against the estate. Suppose on the last day on which revenue may be legally paid a widow finds herself unable to meet a Government demand from deficiency in the collections of rent from the tenants. There cannot be a question that a third party, who under these circumstances lends money to the widow to meet the Government demand is entitled to recover it out of the estate. But suppose the next day after the revenue was paid, the arrears of rent were paid into her treasury and she, without repaying the loan, squandered away the whole of the rent received, her act would not in the least degree affect the rights of the lender.

As another example of his accurate views on Hindu law may be cited the case of *Ramnath Tolapattro v. Durga Sundari Debi* reported in I. L. R. 4 Cal. 550, in which he declared, after an elaborate consideration of the Hindu law texts, that a mother, guilty of unchastity before the death of her son is, by Hindu law, precluded from inheriting his property. Maclean, *J.*, who concurred in the opinion, stated :

I cannot pretend to add my weight to the exposition of Hindu law as applicable to this case, which has just been delivered by Mr. Justice Mitter.

A similarly correct attitude characterised his interpretation of the Mahomedan law. In *Faryund Hossein v. Janu Bibee* reported in I. L. R. 4 Cal. 588, he held that the mere pronunciation of the word 'talak' three times by the husband had not the effect of divorcing the wife; from a careful examination of Hamilton's "Hedaya" and Baillie's "Digest", Mr. Justice Mitter came to the conclusion that the words must be addressed to the wife or other person on her behalf. In I. L. R. 16 Cal. 487 (*Abraham v. Mahtabi*) one Miss Abraham, a Christian missionary brought up a minor girl of fourteen who ran away from her home with a view to converting her to Christianity. The Magistrate in the Lower Court had found that the lady was guilty of an offence under Section 551 Criminal Procedure Code,

and the girl was restored to her lawful guardian under the Hindu law. After the restoration, the revision petition filed by Miss Abraham came up for disposal by the High Court. Mr. Mitter was of opinion that no offence was made out; but as the girl was already in the custody of her lawful guardian, he felt powerless to remedy the effect of the erroneous order of the Magistrate. In the course of his judgment discussing whether the detention by Miss Abraham was "unlawful detention for an unlawful purpose", he said :

Undoubtedly there was an unlawful detention. It was immaterial whether the girl did or did not consent; she was kept against the will of those who were lawfully entitled to have charge of her; and this keeping and the refusal to give her up amounted to detention which was unlawful.

The question whether the purpose was unlawful is however more difficult to determine. . . . It might seem at first sight that the detention of a child against the will of her parent or guardian with a view that she should be brought up in a religion which such parent or guardian disapproved of and the adoption of which would not only involve a total change in the child's mode of life but would also deprive the parent or guardian of any control in the education or bringing up of the child would come within the meaning of the words as well as within the mischief which they were intended to provide against. But we think that it is not so; and that the purpose whether entertained towards a male or towards a female child must be in itself unlawful. . . . It cannot be said that the purpose of enabling or persuading an adult woman to become a Christian would be in itself unlawful. If it is not unlawful in the case of an adult woman, it could only be unlawful in the case of a child by reason of its being done without the guardian's consent. But we think it impossible to construe the section so as to make it include purposes which, although not unlawful in themselves, might only become so when entertained towards a child in opposition to the wishes of its guardian.

The section was not enacted for the protection of children only or of children generally. It applies to women and to female children only, and this combination and the exclusion of male children goes to show not only that some definite purpose unlawful in itself was contemplated but that the purpose had some special reference to the sex of the person against whom it was entertained. This view is supported by the earlier legislation on the subject. . . .

With the religious aspect of the case, we have nothing to do. It matters not whether the case is one of a Hindu child leaving her parents and being received and detained against their will in a Christian institution in order that she may become a Christian, or of a Christian child leaving her parents and being received and detained against their will in a Mahomedan institution in order that she may become a Mahomedan.

A similar indifference to extraneous considerations of race or religion characterised his dissenting judgment in Babu Surendranath Bannerjea's case. Babu (afterwards Sir) Surendranath was the editor of the *Bengalee* in which he had made, on Mr. Justice Norris of the Calcutta High Court, remarks which were clearly in contempt of Court. The other Judges who sat with Mr. Justice Mitter to dispose of the contempt proceedings directed him to be detained in Civil Jail for two months, as they were of opinion that the matter was different from the cases of Tyler and *In the matter of Piffard* and also that they had power to decide on their judgment in the particular case unfettered by those precedents. But Mr. Justice Mitter said, after referring to the details of this case and of the two earlier cases:

I have gone into these details, because it seems to me that in determining the amount of punishment to be inflicted on Surendra Nath Bannerjea, we should take these cases as our guide. The complexion of guilt in the case of Mr. Tyler is certainly not of a lighter character than that of Surendra Nath Bannerjea.

Among the notable decisions of Sir Romesh Chunder Mitter may be mentioned : (1) The cases reported in I.L.R. 14 Cal. 248 and I.L.R. 13 Cal. 200 where he discusses elaborately whether a particular stipulation in a contract is by way of penalty or not; (2) the case reported in I.L.R. 14 Cal. 256 which was confirmed by the Privy Council on appeal and which decided that the Secretary of State for India in Council "does not reside, carry on business or work for gain" within the meaning of the

Letters Patent in order to confer jurisdiction thereunder ; (3) the Full Bench case of *Lal Mohan v. Jogendra* where it was decided that the newly enacted Bengal Tenancy Act was not retrospective as regards new rights created by it ; (4) the case reported in I.L.R. 12 Cal. 204 where the limits of the rule enacted in Section 317 of the then Civil Procedure Code are laid down in these terms :

There can be no doubt that if a creditor of the real owner of a property brings a suit for declaration that it belongs to his debtor and not to the certified *benami* purchaser, it would not be precluded by the provisions of Section 317. That section was intended to prevent fraud and if it were to apply to a case like that stated instead of preventing fraud, it would promote fraud ;

(5) the case reported in I.L.R. 14 Cal. 55 where he enunciated the salutary rule that as soon as an order is passed appointing a person to be the guardian of a minor, the minor becomes a ward of Court ; (6) the case of *Misri Lal v. Mozar Hossain* where he discussed the legality of a mortgage of crops to be grown in future and pointed out :

Such a transaction as this is neither governed by the Transfer of Property Act nor by the Contract Act. We see no reason to hold that it is not valid. It has been recognised in courts of justice in this country ;

(7) the case reported in I.L.R. 10 Cal. 15 which decided that Regulation 10 of 1793 modified the Muhammadan law so far as it declared that the custody of a minor girl should necessarily be with a female, and that consequently the mother's mother was entitled to the custody of a female Muhammadan minor in preference to her paternal uncle.

On the powers of the High Court as a Court of revision, he took the narrower view which has been upheld by the Privy Council, that an applicant moving the Court to interfere under the extraordinary power given to it by the Charter Act must establish something more than a mere

error of law or a wrong conclusion on evidence ; but in the decision of second appeals he used to consider that where it is found that material facts which have an important bearing on the questions at issue have been omitted to be considered by the Lower Appellate Court, the High Court ought to interfere even on questions of fact.

Sir Romesh Chunder Mitter's activities were not confined merely to his judicial work. He was a Fellow of the Calcutta University for many years and the President of its Faculty of Law. He was deputed to act as a Member of the Public Service Commission in 1887, in which capacity he did yeoman service. He was nominated to the Imperial Legislative Council in 1891 soon after his retirement as a recognition of his able services as a Judge for a long period of sixteen years as well as officiating Chief Justice on two occasions during that period. He was knighted in 1890 soon after his retirement and was, later on, made a K. C. I. E. His high conception of the duties of a Judge left him little time for other activities till his retirement in January 1890 ; but in spite of the fact that he had to retire from the Bench on account of ill-health, the nine years of his retired life were years of crowded public activities. He joined the movement of the Indian National Congress and was one of its most arduous supporters. In the Calcutta sessions of the Congress in 1896, he was the President of the Reception Committee and his speech on the occasion from which the following passages are extracted, was one of the notable pronouncements on Indian political reform :

If the Congress had borne no other fruit than the establishment of cordial relationship and mutual good understanding among the various Indian races and communities with apparently conflicting interests, it would certainly be a matter on which we might well congratulate ourselves.

Our past vicissitudes and the experiences we have gathered ought to make us certainly not sadder, but wiser men. Perhaps it has been, after all, our own fault that misunderstanding of any sort or kind has been allowed to prevail, and it is just as well that to make assurance doubly sure we should at least, so long as there is the faintest chance of misconception, give a sufficiently binding guarantee touching not only our aims but also our mode of procedure so as to bring the certainty of conviction to the wavering, undoubting faith to the suspicious, and satisfaction to the critical. We ought to hasten to define the constitution of the Congress in writing. Although it is a fact which nobody who has watched our work can deny, that from the very commencement we have adhered rigidly to the principle that the Congress should not adopt any resolution unless there was a practical unanimity, and that, therefore, a formal declaration is more or less superfluous, yet I think that superfluity is much safer than economy. It is probable that if we had taken this precaution from before, there would not have been the necessity of this never-ending reiteration of our intentions, this proclamation of ourselves as a useful body. Let us put down in black and white that we shall not adopt any proposal as one for which the Congress is responsible unless it is approved by practically the whole body of us. It will be not merely of the nature of protection of the interests of the minority, but of as complete a unanimity as possible. We should by this means be able to satisfy ourselves that really one sentiment pervades our counsels and underlies our union, to satisfy the Government that our prayers are unmistakably those of the nation and to satisfy our Mahomedan brethren that it will be impossible for Hindu votes to swamp theirs.

In private life, Sir Romesh Chunder was a very lovable person. He devoted considerable attention to the study of the Hindu scriptures after his retirement from office. He maintained his keen interest in the development of science during his period of office and on his retirement, he became the Vice-President of the Indian Association for the cultivation of science—an institution which has attained an unique place in the scientific world by the researches of Sir Jagadish Chunder Bose and Sir C. V. Raman.

Although Sir Romesh Chunder was not an out-and-out social reformer, he had, for a man of his time, fairly advanced views on the subject. He sent his son Binod

to England for studying law against the threats and angry protests of his relatives, and he refused to perform expiation ceremonies on his return. His courageous and straightforward conduct helped him largely in the propagation of advanced and liberal views on the reform of Hindu customs and manners. It may be noted in this connection that this son Binod became, in course of time, a leading lawyer of the Calcutta High Court, and that he was first appointed Standing Counsel to the Government of Bengal, and later, appointed to succeed Lord Sinha on the Judicial Committee of the Privy Council where he remained till his death in July 1930. One of Sir Romesh Chunder's brothers, Babu Unesh Chunder, was the manager of a big estate in Midnapur district and was the author of the well known social drama *Bidaba Bibaha*. Another brother of his, Babu Keshub Chunder, was devoted to the Fine Arts and had the reputation of being one of the best players on *Mridanga* at his time.

Qualities of Sir Romesh Chunder Mitter which struck his contemporaries as characteristic of his nobility were his innate modesty, an entire absence of pride, and a generosity of heart; carefully avoiding public notice, he was responsible for helping the many needy students, and in his native village of Bishnupore, he founded and maintained at his own expense a charitable dispensary and a High School for boys and a Girls' school.

Sir Romesh Chunder died of diabetes in his suburban residence at Bhavanipore on the 13th July 1899. He left behind him three sons: Manmatha, Binod and Provash. Binod became, later on, Sir Binod Mitter of the Judicial Committee, as already mentioned. Provash is now a Member of the Executive Council of the Bengal Government on deputation as a delegate to the Round Table Conference.

SIR ASUTOSH MUKERJEA

BIRTH AND FAMILY HISTORY

SIR Asutosh Mukerjea was born on the 29th June 1864 in Bhawanipur, then a suburb and not as now an integral part of Calcutta. His ancestors came from Sirat Balagarh, one of those villages of old Bengal, fringed by the Ganges, green, populous and happy. His father Dr. Ganga Prasad Mukerjea was an eminent medical practitioner who had settled in Bhawanipur for his professional work. He took his M. B. Degree from the Calcutta Medical College. It was open to him to enter Government service after the general fashion of his time, but being a man of independence, he preferred to face the struggles of a private practitioner a decision which in those days needed no small courage, for the hostile rivalry of the physicians of the old *Kaviraj* school was a factor to be reckoned with. Dr. Ganga Prasad was a man of culture and vigorous personality. He carried about him a stimulating and healthful influence. The great shock of his life came when his only other son died while yet young after a brilliant academical career. He tried to solace himself by founding a prize in the University to stimulate the study of philosophy, the subject for which his son had shown special talent. But this brought no lasting consolation. Sir Asutosh nursed his father with great tenderness, but his grief was incurable and he succumbed to the shock in the year 1889. Sir Asutosh

owed a good deal of his mental peculiarities and gifts to the educative influence of his father during the formative days of his youth. But Nature had also endowed him with talents of a very high order. While yet a boy of twelve, he had developed a thirst for useful knowledge which was a feature of his busy, strenuous life. But he was not a robust boy; he had to spend some years before he realised the value of health and took steps to achieve it.

SCHOOL DAYS

When young Asutosh joined the South Suburban School in his fourteenth year, he had laid deep the foundation of his education. In addition to the general knowledge he had attained, he had developed a distinct bent for mathematics. The note-books in which he had worked many of his geometrical solutions are to this day preserved and form interesting evidence of the studies and inclinations of his boyhood. It is said that in the course of his studies as a boy in the suburban school, he discovered certain errors and inaccuracies in Barnard Smith's Arithmetic. With thorough confidence in himself, he wrote about these errors to the publishers, and the author made a handsome acknowledgment of the mistakes and sent him a collection of books including the complete works of Shakespeare as a present. Young Asutosh continued in the school till 1879, in which year he passed the entrance examination, standing second in the University which, in those years, comprised the whole of Northern India.

AT COLLEGE

College education in those days was yet in its beginnings. Pandit Ishwar Chunder Vidyasagar was the first to realise that education should be primarily the concern of Indians themselves. Babus Surendranath Bannerjea and Ananda Mohan Bose followed him and

started colleges manned entirely by Indian Professors, and the City College soon grew to be a potent instrument of education in Bengal. But higher education was still in a very imperfect condition and during the eight years of Sir Asutosh's university career, he was destined to realise that the system needed a thorough revision. It was in 1880 that Sir Asutosh joined the Presidency College. He applied himself to his studies with great diligence and being a boy of superb endowments, was able, while yet in the junior classes, to master the courses prescribed for the higher examinations. Mathematics was his special subject and with the assistance of Professor Booth, he achieved in it, as early as his second year in college, an exceptional measure of excellence.

Asutosh was also an enthusiastic member of the College Union. The capacity for keen debate and effective speaking which he had shown so much in his life was cultivated in the debating society. His interests seem to have covered a wide range of subjects and the views he expressed on many of them evidence maturity of judgment and a wide outlook on things.

In 1883, the whole of Bengal was stirred by the sentence pronounced on Babu Surendranath Bannerjea who was in those days the idol of young Bengal, and Sir Asutosh shared all the excitement and indignation that prevailed among the young men of his days. He even went the length of addressing some of the protest meetings held at the time. He appeared for the B. A. examination in January 1884 and stood first in the university. But in the midst of his activities, he was contributing solutions of difficult mathematical problems to the journals in England. His graduation gave him a little more freedom to carry on this work and he contributed more frequently

than before. His solutions very soon attracted the attention of the learned and he was elected, ere yet he had left college, to the fellowship of the London Mathematical Society, the Royal Astronomical Society and the Royal Society.

He continued his studies in Mathematics for the M. A. degree. He won the first place again in 1885 and stood for the Premchand Roychand scholarship which was to be awarded in the succeeding year for proficiency in science. Asutosh had himself suggested in a pamphlet written by him under the pseudonym of "Noebus", that this scholarship should be awarded alternately for science and literary studies. It was the turn of science that year and he set himself to the task of winning the scholarship. The contest was a keen one, but Asutosh won the prize of Rs. 8,000 and the gold medal. The following week he sat for the M. A. degree in physical science in which, to his surprise, he was put in the second class.

INTEREST IN EDUCATIONAL CONDITIONS

Academical brilliance is not always the test of true greatness. Often school and college prodigies have made sorry men in life. But, in the case of Sir Asutosh, it was the result of the combination of high gifts of intellect with diligence and method and of conscious endeavour. He showed these even more remarkably in his observation of educational conditions. He viewed them with an intelligent and penetrating eye and the conclusions he came to have not been substantially altered by all the later years of experience and practical touch with details. These conclusions are not only interesting in themselves but are prophetic of the great role he was destined to play in life, that of the Vice-Chancellor of the Calcutta University for

ten eventful years and as revealing the making of by far the most powerful educationist India has yet produced.

One opinion that he held violently was that a place of learning should not allow racial bias to prejudice the choice of teachers. The interests of culture demand, he said, that the most learned and the best qualified alone should teach, irrespective of their race or nationality. Sir Romesh Mitter who was then the only Indian member on the Bench of the Calcutta High Court, represented the general opinion when he said that the days of European Professors had gone by. Asutosh wrote to the *Statesman* contradicting this view and maintaining that the interests of culture were superior to those of nationality. An animated controversy ensued and he stuck to his guns courageously and supported himself with an array of arguments.

Subsequently he also realised the utter incapacity and indifference to education which marked the members of the Senate and Syndicate. Men of real knowledge and sympathy had no place on these bodies. A few officials, he held, who knew little and cared less about university affairs governed the education of Bengal. If men like Dr. Mohendralal Sircar or Sir Gurudas Bannerjea came to take an interest in educational affairs and gave it practical expression in the reforms they suggested, it was due to the influence Sir Asutosh was able to exercise on them. The principle he strongly held that young men fresh from the university should have a voice in the government of the university, and that their interest should be secured for the cause of education by their appointment as examiners and members of the Senate, was recognised by these men and later by Sir Courtney Ilbert. Sir Asutosh was the first examiner to be so appointed, and the news that a young man of twenty-four would be

examiner of the M. A. students along with Professor Booth, created quite a sensation in Calcutta. But this was only the first of numerous honours which were to fall thick on him. In 1889, at the instance of Sir Courtney Ilbert who recognised the abilities of the young man and appreciated his views and enthusiasm, he was nominated to a seat on the Senate.

CHOICE OF PROFESSION—LAW

Asutosh joined the Law Classes of the City College after he took the B.A. degree, and in 1888, he took his B. L. degree and was enrolled in the same year. Among his lecturers, it is of interest to note, was Lord (then Mr.) Sinha, still an unknown member of the bar. Asutosh attended during these years the Tagore lectures on law and carried away for three successive years the gold medals awarded for proficiency in the subjects of their lectures. The chief event of these days was that he became an articled clerk under Sir Rash Behari Ghose who was just then rising into fame. Dr. Ganga Prasad was the medical adviser and friend of Sir Rash Behari Ghose and this circumstance explains the interest the latter evinced in the welfare of the young man. The contact which the young student of law had with the master-mind of Bengal was bound to be invaluable. When Sir Rash Behari brought out the second edition of his classical work on the Law of Mortgages, he was considerably assisted by his articled clerk and the great jurist acknowledged it in his preface to the book. Sir Asutosh did not, any more than his master, find the profession of law a bed of roses. It exacted the most assiduous toil which, however, Sir Asutosh ungrudgingly offered at its altar. But the struggle was hard. It was not until he passed the

Honours in Law and got the Doctor's degree that he obtained anything like a firm footing ; but after this, he rose quickly to a position of prominence. In 1904, he was elevated to the Bench, and during the ten years since 1894 he had come to the forefront of his profession. He delivered a course of lectures on the Law of Perpetuities in British India which, though not very well known, are pronounced by competent critics to be brilliant and fascinating studies in an important branch of Law. During the time he was a lawyer, Sir Asutosh had ~~articled~~ clerks in his turn, and two of these, Sir Nalini Ramjan Chatterjee and Sir Charn Chander Ghose, rose like himself to the position of judges of the High Court.

AS JUDGE

We must now turn our attention to his career on the Bench, a career marked by all the vigour, independence and foresight which distinguished his life and was such a notable feature of his work as Vice-Chancellor of the Calcutta University. Sir Asutosh had, by his long and meritorious service to the cause of justice, upheld the traditions of the Calcutta High Court traditions built upon the great work of an illustrious band of jurists and judges from Dwaraka Nath Mitter to Sir Lawrence Jenkins. His pre-eminence as judge and jurist was universally recognised, and there was a consensus of legal and judicial opinion that he not only upheld the great name of his predecessors in office but even raised the prestige of that office by his own singularly luminous judgments. He was a Judge of the High Court from 1904 till the end of 1923. During this period, for a few months in 1920, he officiated as Chief Justice of Bengal. During all this time it was his privilege to set up a lofty standard of judicial work

and maintain it to the last day of his official life. His judgments, said Sir Dawson Miller, "were invariably lucid and a masterful exposition of law on every subject with which they deal. . . . They have only to be quoted to command universal respect".

The number of his judgments which can be found in the pages of the Law Reports exceeds, we are told, two thousand, and they relate to almost every branch of law. It is impossible to deal with even the more important judgments in this small sketch, but by way of illustration showing the variety and scope of his judgments, we shall refer to a few of them. Mr. Probodh Chandra Sinha has furnished a summary of some of these judgments in his study of Sir Asutosh from which we draw freely.

Firstly, let us take the case of Chandra Kanto Ghosh *versus* the Calcutta Improvement Trust. This was of considerable importance to the public and attracted a good deal of attention in the press.

The Calcutta Improvement Trust was and is a very powerful body, patted on the back by the Government as well as by the European press and the public in Calcutta; and Mr. C. H. Bompas, its original Chairman, was their prizeboy; rightly or wrongly they decided to have the land of one Chandra Kanto Ghosh; against their decision, this gentleman brought a suit in the High Court on the ground that his land was situated at a safe distance from the line of their operation and so the Trust could not claim his land in that position. But Mr. Justice Greaves who tried the case, gave his decree for the Trust. Against this decree, an appeal was preferred by Chandra Kanto Ghosh and it was heard by the Appellate Bench presided over by Mr. Justice Mookerjea, who upheld the contention of the poor man and decided against the all-powerful Trust.

This decision and judgment of Sir Asutosh Mookerjea were hailed with no little relief and were indeed received with enthusiasm by the whole Indian population.

No doubt the judgment of Mr. Justice Mookerjea was ultimately reversed by the Privy Council—for it was contended that it cut the very ground from under the feet of Mr. Bompas; the

Indian public and the Indian press refused to accept the Privy Council's decision but clung to Mr. Justice Mookerjea's as true and right.

Another case of importance to the public came before him sitting in Appellate Bench. A respectable gentleman at Howrah—an Executive Engineer, P. W. D.—and one or two of his people were severely assaulted and actually laid violent hands on by the police; the gentleman brought a criminal case and some members of the police got a few years' rigorous imprisonment; but an appeal was preferred and the sentence was prayed to be reduced.

Mr. Justice Mookerjea, however, rejected the appeal, refused to reduce the sentence, held it to be lenient instead of being stiff, complimented the complainant—the Executive Engineer—on his 'public spirit' in bringing the case against the ruthless and omnipotent police and passed a severe stricture upon the latter.

Sir Asutosh was called upon to try, along with Mr. Justice Hoolmhood and Sir Laurence Jenkins, C. J.—who between themselves constituted a Special Tribunal—to try one of the most sensational cases—the Musulmanpara Bomb case.

The Special Tribunal acquitted the accused and set the poor young Bengali at liberty. Sir Asutosh delivered a very short but concurring and crushing judgment of a few sentences only, in which he mercilessly exposed the unscrupulous ways of the police and pithily sternly remarked that their attempt to 'connect' an innocent youth with 'a dastardly crime' had absolutely failed.

Let us refer at some length to his last judgment delivered on the eve of his retirement from the Bench. This learned and elaborate judgment of his is said to be a masterly pronouncement on intricate points of law and procedure; it is really a characteristic and striking judgment from more than one point of view.

The case is known as Sankaritola Post Office Murder Case, better still as Emperor *versus* Barendra Kumar Ghosh.

The accused, a young, newly married man scarcely out of his teens, was charged with murdering with a revolver the Post Master of Sankaritola Post Office, Calcutta, not alone but in company of three or four other unknown persons. He was committed to Sessions and was tried and sentenced to death by Mr. Justice Page. But before the trial took place the Counsel for the accused saw the Judge privately in his Chamber; he said to His Lordship, that they 'felt the case to be a difficult one' and asked him whether he would treat the accused leniently if the accused pleaded guilty to the major charge. Mr. Justice Page could, however, give no assurance or information as to what he would do at the trial. Then a certificate was obtained from the Advocate-General, Bengal, under Clause 26 of the Letters Patent for a review of the case; and the application for review was heard by a Full Bench presided over by Sir Asutosh who delivered a lengthy and a very interesting, instructive and illuminating judgment.

While reviewing the actions of various parties in the trial, he criticised them—the defending Counsel, the Advocate-General who happened to be the power behind the throne in Bengal as well as the trial Judge, a newly appointed British colleague of his on the Bench—in a strict but dignified and impartial way, and this showed the mettle the man was made of.

He criticised the conduct of the defending Counsel as well as of the Judge, a colleague of his on the present Bench in these words :

This much appears to me to be incontestable that it is not his (defending Counsel's) duty to approach the trial Judge and to tell him that in his opinion the man whose fate has been entrusted to his care, has no defence to make. I venture to add that if as trial Judge I had been placed in such predicament, I would without hesitation have reported the Counsel concerned to the Chief Justice for disciplinary action and would have asked to be relieved of the duty of participating in the trial and in passing sentence upon a man whose Counsel had previously assured me that there was no defence to make.

The Advocate-General came in for his share of criticism for granting a certificate for review of the case under Clause 26 of the Letters Patent *ex parte* and without sufficient materials. "The fact remains," proceeded Mr. Justice Mukerjea :

that statements were made in the petition presented to the Advocate-General which are either inaccurate or are not supported by the evidence on record. In my view, the certificate of the Advocate-General should be granted after he has heard the representatives of the prisoner and of the Crown and has carefully considered all the available materials whose accuracy has been verified by Counsel or other responsible persons. If this course had been pursued in the present case before the certificate was granted, there would have been no occasion for an unseemly dispute as to the weight to be attached to the certificate.

Thus he dispensed even-handed justice, and he was straight and outspoken in his criticism of his colleagues, however exalted.

Sir Asutosh's eminence as a jurist had been due to his intense erudition and wide outlook. He does not belong to the class of lawyers who scored their triumph by readiness in retort, resourcefulness, cleverness in cross-examining and seductive eloquence. He belonged to the class of Sir Rash Behari Ghose and Sir V. Bhashyam Aiyangar.

Sir Asutosh's judgments are striking examples of his profound legal learning. As a judge he was uniformly courteous to the lawyers and few people have been considered brighter ornaments to the Court they presided over. Sir Asutosh acted as Chief Justice from January to March in 1920, and in reply to the congratulations of the bar, spoke these simple words :

I desire to thank you and through you the members of the profession on whose behalf you have spoken for the cordial reception you have given me and for the good wishes you have so kindly expressed. Since 1904 when I was invited to accept a seat on the Bench of this Court, I may say conscientiously I have never spared myself in the discharge of my judicial duties and it is a source of genuine satisfaction to me to find that I enjoy the confidence of all branches of the profession. I wish I could persuade myself that I possess all the good things which you so generously attributed to me, but I realise that whatever success I may have achieved in the discharge of my judicial duties, that success is in a very large measure due to the assistance which I have received from the members of the profession who have appeared before me and who have assisted me with their great talent and learning. The value of that assistance is not probably always realised or

acknowledged. I venture to express the hope that during the short time that I may have to preside over the deliberations of this Court, I may continue to receive that assistance so that the great traditions of this Court may remain unbroken. I thank you again for your kind and cordial reception.

Tributes of admiration were showered upon him on the eve of his retirement from the Bench when he sat for the last time on Friday the 21st December, 1923. The profession and the public mustered strong in the Court-room of the Chief Justice to bid Sir Asutosh an affectionate farewell, and Mr. Basanta Kumar Bose, President of the Vakils' Association, said in the course of an address :

Your career as a Judge has been characterised throughout by profound learning, great ability, marked independence, unerring patience and uniform courtesy. Your successful and brilliant career as a Judge is a source of pride to the members of the profession to which you belonged and will ever remain an illustrious example to the body.

" Apart from the brilliance of your career on the Bench," said the Advocate-General, Mr. (now Sir) B. L. Mitter,

you have earned the esteem and affection of the Bar by your uniform courtesy, quick appreciation and constant encouragement of dissentient merit. In the maze and labyrinth of adjudged cases, you ever walked with a firm step, holding aloft the torch of justice. You demonstrated the truth of the old saying: ' No precedents can justify absurdity.'

Sir Lancelot Sanderson, the Chief Justice, said on behalf of his learned brothers as well as of himself :

The many activities of the learned Judge present a proposition of such dimensions that it would be difficult, if not impossible, to deal adequately with it in the short time which is at my disposal. It all that he has done during the many years that he has sat on the Bench, I am convinced that he has been actuated by one desire only, namely, to maintain the great traditions of this Court and to promote the administration of justice in all its branches. His great knowledge, his wonderful memory and his untiring energy have been devoted to this purpose for nearly twenty years and his service in this respect will always be remembered and will constitute a

record of which any man is entitled to be proud. He has been an outstanding personality not only in the Court but also in Bengal, and I think I may say with propriety that his name has been known and his influence felt throughout the whole of India.

Speaking of Sir Asutosh's judicial career, the *Calcutta Weekly Notes* observed :

The outstanding feature was undoubtedly his erudition. His reported judgments which touch and illuminate almost every topic of legal learning, collected together, would cover volumes. It will be years before it will be possible to appraise correctly at their real worth the service he has rendered in exploring and interpreting a system of law which is not the less difficult of application and elucidation, because it is so largely and incoherently statutory with untiring industry and wide research he carried on for twenty years a work initiated by the late Sir Bhashyam Ayyangar. This alone would have been sufficient to perpetuate his memory as one of the most eminent judges and lawyers India has produced.

Not all his erudition and his characteristic search for analogies and antecedents could make him a hide-bound respecter of mere authorities, however ancient and profound. He had a broad and altogether modern outlook and he regarded law "as not only ancient but growing and thriving, adapting itself to the vital needs and supreme necessities of the age and society in which it lives".

We cannot do better than quote the words of Sir P. S. Sivaswami Iyer's appreciation of the particular characteristics of Sir Asutosh which made him the great judge he was. Said Sir Sivaswami Iyer :

In ability, erudition and strong common sense, he was easily the foremost among the Judges of the Indian High Courts. The days of English Judges who were great jurists and made marked contributions to the growth of law were probably gone for ever in India. If we wish to appraise the merits of Sir Asutosh Mukerjea, he must be tried, as he himself would have wished, by the very highest standards. It would be doing him poor justice to institute a comparison between him and the rank and file of Judges of our rather overcrowded High Courts at the present day. Two great characteristics of Asutosh as a lawyer was his vast learning and his prodigious industry. He was not content to confine his search for principles to the usual repertories of Indian or English decision. His quest for principles took him far afield to the decision of the

American Courts, not merely of the Supreme Court but also of the State Courts and to the decisions of the highest Courts of the Colonies. The habit of turning for light to the American case-law and jurisprudence was first started in India by Sir S. Subrahmanya Iyer. Sir Asutosh Mookerjee improved upon his example and revelled in the citation of American authorities—a practice beset with danger in the hands of less discriminating followers. It may of course be said that time spent by him in the collection of authorities left him too little time for the cultivation of quality. It may also be stated that no other Judge in India had so many varied interests making such enormous demands upon his time.

POLITICS

Sir Asutosh seldom threw himself heart and soul into the politics of the country. Education claimed most of his time and his position as Judge denied him the full freedom of utterance. But in steadiness of independence and consciousness and pride of power, there was none to excel him. He was eminently proud of his culture and nationality which he was wont to carry a little aggressively. Still polities such as is known in India had not been among his interests. Nevertheless there had been few Indians who entered the Legislative Council who were more fearless advocates of popular rights. Sir Asutosh was the elected representative of the University in the Bengal Council in 1899 and re-elected in 1901. In 1903 he was elected by the Calcutta Corporation to represent it in the Provincial Council, and in the same year he was elected by the Provincial Council to represent it in the Imperial Council. Though he served on the Councils for only these short periods, he distinguished himself by his wise moderation and dignified criticism. Discussing the Calcutta Municipal Bill, he defended the elective system in these forceful words :

One of these so-called evils has been described to be the complete failure of the elective system to secure adequate representation even of the different interests existing in the native city; or, to put it in a more practical and more intelligible form, one of

the avowed objects of the Bill was to destroy the dominance of the educated Hindu in the Calcutta Corporation. That object, Sir, I mournfully confess, has been adequately secured by the provisions of this Bill; and I say with all the emphasis I can command that the Bill, in so far as it has attained this object, has my unqualified disapproval; in this respect it has not and it cannot have the smallest measure of my sympathy. But, Sir, it is instructive to enquire, what have you substituted for the dominance of the educated Hindu? You have not satisfied yourself with replacing it by the dominance of the mercantile European or the progressive Mahomedan; but you have replaced it by the irresponsible executive.

And in concluding his remarks, he said in words full of quiet sarcasm rather characteristic of the man:

In spite of the doctrine expounded by the honorable member in charge, I retain, Sir, the right to think and judge for myself. I have made none the custodian of my conscience, and so long as I have the honour of a seat in this Council, it will be my duty to advise the Council to the best of my ability and judgment, regardless of what this party or that party may approve or disapprove.

Sir Asutosh fought his best fight in the Councils when he opposed Lord Curzon's University Bill. The story of that Bill and the wild uproar it created are well known. Sir Asutosh was able, by virtue of his detachment from general politics, to view the measure without political bias. While he recognised the good points in the new proposals, his opposition to them was vehement and powerful, though like that of his colleague, Gokhale, unsuccessful. He spoke the plain truth when he said:

I cannot agree with these unfriendly critics who maintain that the universities have failed in the objects which they have in view, namely, in the words of the great despatch of 1834—"the diffusion of the improvements, science, philosophy and literature of Europe, in short, of European knowledge—and I cannot but point out that in some quarters at least the universities are disliked and cried down, because there is really a dislike of the culture which educated Indians have attained".

Sir Asutosh in his speech charged the Government of starving the colleges and of elevating mediocrity.

AS VICE-CHANCELLOR

Sir Asutosh's exceptional gifts were thus called forth by the University of Calcutta. Here he showed his administrative powers, his capacity for untiring labour, his patriotism, his zeal for reform, his idealism. The period of his Vice-Chancellorship from 1906 to 1914 and a subsequent period of two years marked an era of steady and continuous advancement and the history of the Calcutta University is more than half Sir Asutosh's biography. If he gave the university so much of his genius and leadership, he also gave it ungrudging labour. During the vacations of the High Court, it was no unusual sight to see him working hard at the Senate House from eleven in the morning to eight at night, "toiling", as Sir P. C. Ray says, "like a Hercules and putting his shoulders to the wheels of the elaborate machinery". Sir Asutosh said of himself in words sadder than egoistic: "To university concerns, I have sacrificed all chances of study and research, possibly to some extent, the interest of family and friends and certainly, I regret to say, a good part of my strength and vitality."

The revival of the Vernacular in Bengal owes a great deal to Sir Asutosh's endeavours to give it its proper place in the university. Some of his fondest dreams have been to revivify and re-exalt his mother-tongue. His several attempts to restore to the Vernacular its legitimate place, he has himself described in a humorous passage. On the occasion of conferring the Doctor's degree on Rabindranath Tagore whose poems, it will be remembered, the same University had refused to "approve" some years earlier, he said:

It is now nearly twenty-three years ago that a young and inexperienced member of the Senate earnestly pleaded that a

competent knowledge of the vernaculars should be a pre-requisite for admission to a Degree in the Faculty of Arts in this University. The Senators complimented the novice on his eloquence and admired his boldness but doubted his wisdom and, by an overwhelming majority, rejected his proposal on what now seems the truly astonishing ground that the Indian vernaculars did not deserve serious study by Indian students who had entered an Indian university. Fifteen years later, the young Senator, then grown maturer, repeated his effort with equally disastrous result. In the year following he was however more fortunate and persuaded the Government of Lord Minto to hold that every student in this university should, while still an under-graduate, acquire a competent knowledge of his vernacular and that his proficiency in this respect should be tested precisely in the same manner as in the case of any other branch of knowledge and should be treated as an essential factor of success in his academic career. After a struggle of a quarter of a century, the elementary truth was thus recognised, that if the Indian universities are ever to be indissolubly assimilated with our national life, they must ungrudgingly accord due recognition to the irresistible claims of the Indian vernaculars. The far-reaching effect of the doctrine thus formulated and accepted has already begun to manifest itself, but time alone can prove conclusively the beneficent results of this vital and fundamental change. Meanwhile the young Senator of twenty-three years ago has the privilege to ask your Excellency to confer the Honorary Degree of Doctor of Literature and thus to set as it were the seal of academic recognition upon that pre-eminently gifted son of Bengal who has been a loyal and life-long devotee of the most progressive of the Indian vernaculars.

It is also due to Sir Asutosh's efforts that the university has been able to secure munificent donations for the advancement of knowledge. The magnificent buildings which the university now possesses, the splendid libraries, hostels and institutes of science, not to speak of the numerous chairs, have all been the outcome of Sir Asutosh's unflagging zeal. To mention these is to mention hardly any of Sir Asutosh's services to the university. One can only say that the University of Calcutta, as it is to-day, is almost entirely the handiwork of the man who, in his boyhood, carried away all its honours and prizes and dreamed of reforming its abuses and making it a temple of

learning as great and sacred as any that flourished in India.

Sir Asutosh's Convocation Addresses delivered year after year, made one to feel the throb of his passion for reform and service. All the progress of the year and all the obstacles and losses are traced in clear and lucid language. All the defects in education are carefully considered and criticised. Appeals are made more and more for funds, and the criticism of unfriendly critics is answered. One also sees in these addresses the work he put in as executive head of the Senate year after year. His educational views are given in words breathing wisdom and conviction; sincerity is throughout the keynote. And every one of these addresses contains salutary warning and advice to the young men taking their degree. Through page after page is seen the ardent reformer, the man of towering personality, to whose tactful management the university owes so much.

No one felt more than himself the absurdity which left the university so little scope and discretion in matters on which no other body was better qualified to judge. Is it really necessary, he asked, that when a college applies for affiliation in Hebrew to the B. A. standard, it should, in support of its application, submit to the Syndicate for transmission to Government a gigantic tabular statement several yards long, showing in detail the superficial area, correct to the fraction of an inch, of every class room of the college?

Sir Asutosh's Vice-Chancellorship lasted eight eventful years. The time when he was called upon to guide the destinies of the university promised nothing but toil and trouble. As he said himself: "The task was one to make

the most courageous and ambitious aspirant to the dignity of Vice-Chancellorship pause and consider." But he tells us :

I was sanguine at the time. I appreciated the honour of the call to the helm of affairs at so critical a period, and it had always been my ambition to be allowed to do something—something great as I flattered myself in my youthful dreams—for the good and the glory of my Alma Mater.

Sir Asutosh was naturally the most powerful figure in the university. Some in admiration, others in envy, called him the *de facto* monarch of the realm. Chancellors and Vice-Chancellors may come and go, but Sir Asutosh's personality was the constant and all-powerful factor. When a committee was constituted to enquire into the Oaten Scandal, Sir Asutosh presided over it and his report is an excellent criticism of conditions in the student world, of the influences our young men come under and of the relations which prevailed between the teachers and the taught. Sir Asutosh was unanimously proposed for the office of Education Member vacated by Sir Harcourt Butler. But he had not been a particular favourite of the bureaucracy. When the Calcutta University Commission was formed, however, he was nominated a member as a matter of course. It is common knowledge that much that is excellent in the report of the Commission is due to Sir Asutosh who, next to the President, Sir Michael Sadler, was by far the most influential and powerful of its members.

SERVICES TO THE ASIATIC SOCIETY

Much of Sir Asutosh's life had been spent in the daily routine of administrative duties, but there was a side of him which was eminently idealistic. One aspect of it was his wide scholarship. His legal erudition was immense and his zeal for knowledge and learning of every kind boundless. He was for years an enthusiastic member of the Asiatic Society and its president from 1907 to 1909.

His numerous addresses to this body exemplify the catholicity of his interests and the wide range of his learning. He spoke of the progress of discovery and science with an enthusiasm bordering on personal pride. He emphasised the study of Tibetan as an invaluable aid to the exploration of much that is lost and forgotten in ancient Hindu science and literature. His emphasis on the study of Arabic in order to enlarge the bounds of Indian jurisprudence and elucidate Mohammedan Law was only an expression of a need sadly felt in the legal world of India. In his advocacy and appeal for the study of Rajput bardic literature, Sir Asutosh pleaded for the reopening of a field of knowledge full of enchantment and romance and bristling with sidelights on Rajput history. He was also a great student of Buddhism and in the ceremony held in 1920 to present to the priests a Buddhistic relic, he played a prominent part.

The museum at Calcutta was one of his chief interests and it was only fitting that he should have been its president (1909). When the first Science Congress was held in Calcutta, the honour of opening it fell to the lot of Sir Asutosh. It is not given to many to be so many-sided in knowledge as well as in honours. His Sanskrit convocation Addresses illustrate his zeal for the ancient learning which he reverenced no less, perhaps more than the light of the West. The splendours of Mithila and Vikramasila exercised their spell on this remarkable man no less than the marvels of modern science.

SOCIAL AND RELIGIOUS VIEWS

There is a very curious misapprehension among considerable numbers of Indians that Sir Asutosh was a hide-bound conservative. His persistent adherence to Indian dress and to the orthodox Hindu methods of living,

as well as the fact that he performed *pujahs* in the old Brahmin style seem to have contributed to this belief.

He did not go to Europe for his studies, not because he had any objection to crossing the "black waters", but because he was loth to displease his parents. Sir Asutosh was not a social rebel, but he did not strike a student of his life as a conservative either. He allowed his widowed daughter to remarry and sent his son to Europe for studies. We have further his own clear public utterances which throw some light on his social and religious views. Speaking at the first Convocation of the Mysore University, he said :

Let me ask what course shall we choose, while the world all round is making such gigantic strides on the path of progress, ever seeking to gain mastery over the forces of Nature? We cannot disentangle ourselves, even if we wish, from irresistible world-currents and sit on the lovely snow-capped peaks of the Himalayas absorbed in contemplation of our glorious past. It is most emphatically true that the community, the people, the nation, the race, which, like the Greek philosopher, will live in its own tub and ask the conquering powers around it to move away from its sunshine, will soon be enveloped in eternal darkness, the object of derision for its helplessness and of contempt for its folly. We cannot afford to stand still, we must move or be overwhelmed; we cannot waste previous time and strength in defence of theories and systems which, however valuable in their days, have been swept away by the irresistible avalanche of world-wide changes. We can live neither in nor by the defeated past; and if we would live in the conquering future, we must dedicate our whole strength to shape its course and our will to discharge its duties.

NON CO-OPERATION

With such catholic views it is no wonder that Sir Asutosh resisted the educational boycott preached by Mr. Gandhi and the Non-Co-operators since 1921. Sir Asutosh had for a decade and more been the life and soul of the Calcutta University and when he saw the youth of Bengal led away by the passing frenzy of Non-Co-operation, he stood by his *Alma Mater* with redoubled faith and courage.

When, at the time of the examinations, the students who had left their colleges gathered together at the steps of the University Hall and fell flat at the entrance to be walked over by their fellows, Sir Asutosh, moved at the sight of such self-sacrifice and devotion, appealed to them not to be misguided. He told them that it was in their power to make the university a thoroughly national one and the only way to do it was to return to their colleges. Presiding over the meeting of the Senate in April, soon after his re-appointment as Vice-Chancellor, Sir Asutosh said:

That fifteen years ago there was a great ferment and excitement throughout the province on account of political causes and that excitement took the shape of a revolt against educational institutions. At present there was around them a similar excitement, probably of a graver character, because the excitement was not local. In addition, a desperate attempt had been made by critics to bring this university into discredit.

He said, with the co-operation of the Senators, he hoped that he would be able to promote the good name and reputation of the university.

CONCLUSION

In private life, Sir Asutosh was simple and unaffected. He lived a healthy, strenuous life, preferring the traditional ways of old Bengal to the conventions of European civilization. Independence was the strongest point of Sir Asutosh's character. His whole look was aggressive, autocratic and dominating. The impression of a powerful personality was completed by his thick, shaggy eyebrows and his strong, broad forehead. Every lineament of his powerful and intellectual face suggested high birth, culture and refinement. But a bull-dog expression predominated and when he passed away on the 25th May 1925, it was felt as if a mighty but beneficent influence had been removed from the earth. Sir Asutosh's life was inspired by high ideals and he strove like a giant to realise them.



SIR ASUTOSH MUKERJEA

SIR N. G. CHANDAVARKAR

SIR Narayan G. Chandavarkar belonged to the Samyukta Gowd Saraswat Community of which Kashinath Trimbak Telang was an illustrious scion. He was born in Honaver, a seaport town in North Canara, in 1855.

Sir Narayan, after some home education, joined the English school in his district. In 1869, he went to Bombay where he joined the Elphinstone College in January, 1873. In this college his talents were soon recognised, and he was the happy recipient of many honours open to a student in those days. He carried away "the Rajah of Dhar Prize" and another prize for an essay on "English Monasteries and their Dissolution". In 1877, he passed the B.A. degree examination in the first class and won the "James Taylor Prize" in recognition of which success he was appointed junior Dakshina Fellow. The then principal of the college, Dr. Wordsworth, was favourably impressed with the abilities and high moral character of Narayan and in a certificate granted by him to his pupil, he said that Mr. Chandavarkar was "remarkably pains-taking and industrious", that "his original compositions were very distinctly above the average merit" and that he was "a person of considerable literary culture but singularly free from presumption or vanity". It need hardly be said that this appreciation resulted in a mutual friendship between the Professor and the young Chandavarkar which deepened every day. Dr. Wordsworth, when, on retirement, he left India for good, had the

happiness of seeing his pupil well established as a respectable and distinguished lawyer of Bombay.

Chandavarkar's later attitude towards life was in a large measure shaped by the training which he received and the habits of thought which he cultivated during his college career. In those days the Elphinstone College had on its staff several eminent Professors who differed from the ordinary Professors of to-day, in that they took a broader outlook of their responsibilities towards their students and considered that their duty was not simply to train young men for Government service or for the liberal professions, but to prepare the boys for the complex problems of life which would, in later life, stare at their face. The days of Sir Narayan's college career were among the most critical in Indian history. Education was fast spreading and with it the ideal of the Brotherhood of man and the Fatherhood of God was permeating the educated circles of Hindu society. The question of caste and inequalities of classes was coming under the search-light of modern thought, and Mr. Chandavarkar's attitude towards the depressed classes, and some of the crude superstitions of obstinate orthodoxy, was becoming more and more definite under the liberalising atmosphere of college life. As the excitement of the movement was fast subsiding, a new light was beginning to gleam in the outskirts of Indian political horizon, a light which was soon to deepen into the beacon-light of a new era, ushered in by the Indian National Congress. The new democratic wave which was passing through Indian life, left not the sanctuaries of the college unaffected. Students caught the first throb of the new life and transmitted the wave with ever-increasing intensity to their succeeding generations.

Once out of the college, rich in academic honours, Mr. Chandavarkar took to journalism. In 1878, he was appointed to edit the English columns of the *Indu Prakash* which he did with considerable ability till 1889, the paper having acquired great reputation under his editorship. In spite of his success as an editor, he was after all not suited for that particular vocation. Mr. Chandavarkar therefore thought it more prudent to take to the profession of the law. In 1881, Mr. Chandavarkar took the LL.B. degree in the first class, carrying the Arnold Scholarship for Hindu Law. He was in due course enrolled as a pleader of the High Court, where he subsequently had a most successful career. He confined his attention more to High Court work than to outside engagements. He had tempting offers of employment more than once, but he preferred to continue a free man.

Mr. Chandavarkar's freedom from the trammels of office was an event which was a source of great blessing to his country, and an intelligent and patriotic young man as he was, he devoted his energies not only to the domain of law, but also to the varied field of public affairs. We are sometimes told that the salvation of India lies not so much in the work done among Indians, but in the proportionate enlightenment of the democracy of England. Accordingly, when English Parliamentary elections were approaching in 1885, it was thought desirable by Indian politicians to send representatives of repute and ability from the different presidencies to England, there to stir up the British democracy to a sense of its responsibility to India, and to help and back up the election of those Englishmen whose sympathies towards this country were well known. The choice of the Bombay Presidency fell upon the brilliant young Chandavarkar,

who, in 1885, sailed for England together with his colleagues, Messrs. Manmohun Ghose and Salem Rainaswamy Mudaliar, from the other presidencies. The work done by this party of Indian representatives was distinctly serviceable to their country and was highly spoken of. Mr. Chandavarkar, soon after his return, published a pamphlet in which he modestly narrated the reminiscences of his English activities.

This period in Mr. Chandavarkar's life was not wholly confined to politics. Sir Narayan was possibly known to the world more as a social reformer than as a political enthusiast. With many others he felt that the social organisations of this country required a great deal of immediate spade-work and overhauling, and that sound and rapid political evolution of India was continually being hampered by caste bickerings and caste prejudices. When the Age of Consent Act, introduced in the Imperial Council in 1892, was before the public and enjoying a wide reputation of bitter criticism and opposition, Mr. Chandavarkar took his strong stand by it, because he felt that in matters affecting a whole nation, the Government had every right to interfere, and it was suicidal to bar the gates of Government authority and sanction against the social reformation of Indian society. In an exhaustive article of singular vigour, contributed to the columns of the *Bombay Gazette*, Mr. Chandavarkar historically reviewed the past policy of the Government from the time of Warren Hastings as justifying legislative interference in social matters when they affected the well-being of the whole nation.

Sir Narayan was a speaker of great ability and distinction, and he naturally took a prominent part in all public functions in the city. His abilities once well known, his

services were requisitioned in every department of public life. He was made a Fellow of the Bombay University in 1886 by Lord Reay, and, in 1889, he was created a Justice of the Peace. The rate-payers of Girgaum returned him to the Bombay Corporation in 1888, where he rendered much useful service in regard to the location of the cholera hospital in Khetwadi, a populous part of Bombay, and also in framing bye-laws of the joint schools committee. The services which he rendered in 1892 in connection with the Age of Consent Act, have already been mentioned and need no repetition here. In 1892 occurred an event of great importance in England, which was a rare good fortune to India and that was the election of Dadabhai Naoroji to the English Parliament by the electors of Central Finsbury. Mr. Chaudavarkar was one of those who took part in the public meeting in the Town Hall, convened for the purpose of thanking the Finsbury electors and congratulating Dadabhai Naoroji and held under the presidency of Sir Dinshaw M. Petit, Bart. The years 1894-1896 were passed in comparative inactivity, although he continued to conduct services in the Prarthana Samaj, of which he was the mainstay. In 1896, he presided at the anniversary of the Madras Hindu Social Reform Association, when he delivered an address which was much appreciated. The same year he presided over the Provincial Conference held at Karachi, and his address to that assembly was marked by his usual moderation and thought. In July 1897, during the regime of Lord Sandhurst, he was elected by the Bombay University to be its representative in the local Legislative Council. During his tenure as a member of the Legislative Council, Mr. Chaudavarkar took an active part in connection with several important measures, such as the Police Bill, the

Bombay District Municipalities Act, and the Ghee Adulteration Act. Lord Sandhurst more than once expressed his high opinion of his services in the Council, and Sir Charles Olivant, who was then judicial member of the Government, spoke of him in terms of praise. In 1899, he was re-elected a member of the Council. In December 1900, he presided at the Indian National Congress held in Lahore, and delivered an Address that marked him out as a first-rate moderate in politics.

THE PLEADER-JUDGE

In January 1901, on the recommendation of Sir Lawrence Jenkins, Lord Northcote, then Governor of Bombay, appointed him acting Judge at the High Court, *vice* Mr. Justice Ranade, when he went on furlough for six months. Mr. Ranade, however, died soon after, and Mr. Chandavarkar was confirmed in his office. He was the first Pleader-Judge chosen to preside at the Criminal Sessions and at the Original Side of the High Court. Sir Narayan made a close study of the original authorities on Hindu Law, and his judgments based on the law are regarded as marked by careful research. His passion for law was unsurpassed, and even up to the days of his retirement he would spend some time nearly every day with old Shastries or Pandits studying original Hindu Law books. Sir Lawrence Jenkins held him in high esteem, and in one of his judgments said that he was always reluctant to differ from him and that he took the greatest care in trying cases. And, indeed, his judgments show a very close study of the decisions of the House of Lords and the Privy Council. Lord Northcote invited him to the Delhi Durbar as his guest. In 1909, he was appointed acting

Chief Justice of Bombay when Sir Basil Scott went on privilege leave.

Of his judicial career, everybody spoke in high terms. Special credit is due to him for restoring respect and admiration for Hindu law commentators :

His judgments on Hindu Law exhibit genuine attempt to attain a scientific grasp of the Hindu view-point by a comprehensive study of the texts, and specially the rules of interpretation known as the *Mimamsa*. A reading of the Daya Chapter of the *Mitakshara*, or for the matter of that, the chapters of other works found in Stoke's *Hindu Law Books*, is quite insufficient to give one an idea of the legal methods or even a comprehensive idea of the real views of the authors concerned. As has been recognised in a recent judgment of the Privy Council, *Vijnaneshwara* is a logician of no mean ability and inconsistency should not be lightly attributed to him. If he explains a term or adopts a rule of construction in one part of his book, he must be taken consistently to follow it in other parts of his work and it can be well imagined how a partial study of the work is likely to give a wholly distorted impression of the author's views. Many of the crude criticisms levelled against him, owe their origin to the partial and incomplete study of his work under the unilluminating and occasionally wholly misleading translation and editing of Colebrooke. Mr. Justice Chandavarkar realised this and apparently set to work with the deliberate intention of avoiding those errors and the result is, we have in his judgments on questions of Hindu law a remarkably full and reasoned out treatment of the subjects dealt with.

The above passage from Mr. B. Sitarama Rao's lectures on the "Law Reports" indicates the service done by Mr. Justice Chandavarkar to the proper understanding and appreciation of Hindu jurisprudence.

A notable decision of his which embodies his correct interpretation of the Hindu law texts is the case reported in I. L. R. 31 Bomh. 495 ; the following passage is extracted from his elaborate judgment :

The only question of law raised in this second appeal is whether the appellant, who has never married but who has led the life of a prostitute since her dedication as a *Murali* to the service of the god Khandoba, is an unmarried woman within the meaning of that term in the rule of Hindu law, which regulates the succession of daughters to their father's property.

The rule that an unmarried daughter succeeds to her father's property before her married sister is stated both in the *Mitakshara* and the *Vyavahara Mayukha* on the authority of three *Smritis* or texts--one is of *Katyayana*, the second of *Brihaspati*, and the third of *Gautama*. The Sanskrit word for "un-married" used by the first two is *anudha*; that used by *Gautama* is *apratta*. The same rule is given by *Parasara* in his *Institutes* and by *Devala*. The former uses the word *Kumari* and the latter the word *Kanya* for "unmarried" and both terms stand for "virgin" or "maiden". *Mitra Misra*, the author of the *Viramitrodaya*, quotes the rule as given by *Parasara* and by *Devala* and in his comments on it uses the word *Kanya* to signify "an unmarried daughter". (See Mr. Golap Chandra Sarcar Shastri's edition of the *Viramitrodaya*, page 73, section 2, placitum 2.) In a subsequent placitum (No. 4), *Mitra Misra* uses, like the *Mitakshara* and the *Vyavahara Mayukha*, the words *anudha* and *apratta*.

When therefore some of the *Smriti*-writers, and some of their commentators such as *Vijnaneshwara* in the *Mitakshara*, and *Nila-kaunta* in the *Vyavahara Mayukha*, state that an *anudha* and *apratta* (unmarried) daughter succeeds to her father in preference to his married (*udha*) daughter, they mean by the former expression a daughter who is otherwise known and referred to in the Hindu law books as a *kanya* (maiden).

Such a daughter has, under the Hindu law, a legal status of her own with special rights attached to it. And that status is called *kanyavastha* (condition of maidenhood) to distinguish it from the status of marriage, which is called *bharyatwa* or *kulastritwa* and from the status of a prostitute, which is designated *veshyatwa* or *sudharan striita*.

Further, the reason of the rule that where a Hindu dies leaving as his heirs several daughters, some of whom are unmarried and the rest married, the former succeed to his property before the latter is, according to *Smriti* writers and some of the commentators, that the unmarried daughter, having been dependent on the father, has the first right to his property by way of maintenance. According to others, the right is given to her by way of provision for her marriage expenses. Whichever of these two views we adopt, the result is the same. An unmarried daughter succeeds to her father's property before her married sisters, because of her eligibility for marriage and her dependence on the father and his estate till she enters into the state of matrimony.

These two are the principal conditions of what the Hindu law-givers designate *Kanyavastha* (maidenhood). And according to them, the status of a *kanya* stands conspicuously distinguished from the status of a prostitute who is designated a *sudharan stri* (literally, a common woman).

If, according to Hindu law-givers, one essential test of *kanyavastha* (maidenhood) is eligibility for marriage which gives a

maiden the right to her father's estate in preference to a married daughter, that test obviously does not exist in the case of a *sadharan stri* (prostitute), because, as Vijnaneshwar points out in the *Mitakshara*, in her case, "there is an absence of any form of marriage with a particular man" (2). That is, a *kanya* (maiden) is one who is fit, according to the *Shastras*, to be given in marriage, in conformity with the prescribed rites, to one man whereas a *sadharan stri* (prostitute) is a woman, who has cast herself away from all parental or other control and guardianship and the injunctions of the *Shastras*, and, being a woman accessible to all men (*sarva purusha sadharanataya*), she has become ineligible for marriage. (See the *Mitakshara-Vyavaharadhyaya* or section on Judicature; Chapter on *Stri Samgraham* or Seduction of women.) The reason of the rule, therefore, which gives an unmarried daughter the right of heirship to her father before her married sister, ceases to apply to such a woman. The result is, that she is no longer a *kanya* (unmarried daughter).

The conclusion at which I have arrived upon an examination of the texts and discussions in the Hindu law books is that a woman, who, having never married, becomes a prostitute, is not an unmarried daughter of her father entitled as heir to the whole of his property to the exclusion of his married daughters. I agree with the Madras High Court that "a prostitute is certainly not a maiden".

But in the rule giving the right of priority it is made an express condition that an unmarried daughter shall take first, the married after her. That condition stands unaffected either by any Act of the Legislature or by any usage to the contrary, or by any decision of the Courts. There is no question of loss of caste or of immorality involved in that condition so as to attract to it the application of either Act XXI of 1850 or the principle of the decision in *Adryapa v. Rudrara* (1). When the Hindu law says that a maiden who has become a prostitute shall cease to be a maiden, and shall not be regarded as a married woman either, it means that she loses her status as a maiden, and acquires a new status that of the *sadharan stri*, not that of a married woman, and that quite apart from any question of loss of caste or any question of vice being the result of prostitution. It involves a mere change of status just as much as if the *kanya* had ceased to be a maiden after marriage and become a wedded woman. The only difference is that, instead of ceasing to be a *kanya* by marrying, she ceases to be a *kanya* by becoming a *sadharan stri* or prostitute. Under these circumstances the only place which such a daughter can take as heir in the line of daughters is in the absence of the unmarried or the married. That is the logical result and combined effect of Act XXI of 1850, of the decision of this Court in *Adryapa v. Rudrara*, and of the rule of Hindu law that where there are several daughters, some

of whom are unmarried and the rest married, the unmarried succeed to their father's property before the married.

Another important judgment of his explains the principles of Hindu law relating to debts and interest.

According to the Hindu law, default on the part of a debtor to pay his debt after demand of payment necessarily causes loss to the creditor. In the eye of that law, it is a legal wrong which the creditor has suffered by being kept out of his money. Regarding it as a damage naturally arising in the usual course of things from the default, the Hindu law annexes to each contract of debt, in which there is no agreement to pay interest, the term or incident that such loss shall be made up by the debtor if he wrongfully withholds payment after demand. And the loss is measured, according to Hindu law, by the amount of interest which the creditor could have earned if the money had not been wrongfully withheld. Illustration (n) to section 73 shows that such loss may be within the terms of the section. The Hindu law on the subject, so far from being inconsistent with the provisions of the Contract Act, is clearly consistent with it. Neither section 73 nor any other provision provides that such an incident as that annexed by the Hindu law to the contract shall be invalid. The Contract Act does not define or specify what is a loss or damage naturally arising in the usual course of things or which the parties know, when they made the contract, to be likely to result from breach of it. That must be gathered from the circumstances of each case. And if it is an incident of a contract, annexed to it by Hindu law, that certain loss arising from its breach shall be treated as direct and not remote, there is nothing in the Contract Act to prevent effect being given to it. Parties to such a contract must be regarded as having entered into it on the footing of that law.

In our opinion, therefore, neither the Interest Act nor the Contract Act affects the rule of Hindu law, that in the case of a debt wrongfully withheld after demand of payment has been made, interest becomes payable from the date of demand by way of damages. That law was in force when the Interest Act was passed, and under the proviso to the section of the Act, it has continued to be in force. The Indian Contract Act has not interfered with that law. On the other hand, that law is consistent with the provisions of that Act.

His exposition in I. L. R. 33. Bom. 266 of the father's right to sell or mortgage ancestral property for antecedent debts has been accepted by the Privy Council. And the limitation set by him on the father's power is justified on principle.

Under the Hindu law a father has the right to sell or mortgage ancestral property, including the interests therein of his sons, in satisfaction of his antecedent debts, provided those debts were not contracted for immoral or illegal purposes. This right to dispose of the ancestral property so as to include and affect the shares of the sons arises, according to Hindu law, in virtue of the pious obligation of the sons to pay the debts of the father which were not illegal or immoral. In other words, when the father alienates the property, he exercises the power of alienation which the sons would have exercised in discharge of their pious duty which they owed to him: he is virtually alienating the property for them and on their behalf in discharge of their duty in accordance with the power given to him by Hindu law. When once this principle of Hindu law is grasped, it follows that when the right, title and interest of a Hindu son in joint ancestral property has been attached in execution of a decree against him and its private alienation by him has been prohibited by an order of the Court under section 276 of the Code of Civil Procedure, his father is deprived of the power of alienation of that interest in satisfaction of his own debts. And that is so, because the son's power of alienation having been taken away by the Court, there is no power left in him on which the father's power could rest after the Court's order. For these reasons we think the lower Court is right and its decree is confirmed with costs.

The following extracts furnish other examples of his lucid exposition of the fundamental principles of Hindu law relating to different topics: In I. L. R. 33 Bomb. 91, he discussed the effect of adoption by a widow on previous alienations made by her.

If the widow, before the adoption, severs a portion of the inheritance therefrom and transfers it to a stranger, without any proper or necessary purpose binding the estate absolutely according to Hindu law, the transfer, logically speaking, must cease to have any effect after the adoption, since it could only operate during the time that the estate was represented by her as heir and the result of the adoption is to terminate that estate.

Though she represents the estate as heir at the date of an alienation by her, her right is of a limited character and she has no absolute right over it except in certain cases defined by law. She can confer an absolute right on her alienee only in those cases; otherwise the alienation has effect only during the time that her widow's estate lasts. That estate, according to Hindu law, comes to an end either when she dies or when she makes an adoption. The alienee takes the property from her subject to that law, provided the alienation was not for a proper or necessary purpose according to Hindu law. It is difficult to see how the

case of a father can supply any analogy to the case of a widow, which rests on different principles.

In I. L. R. 33 Bomb. 437, he distinguished between the Brahma and the Asura forms of marriage among Hindus :

When the person who gives a girl in marriage receives money consideration for it, the substance of the transaction makes it, according to Hindu law, not a gift but a sale of the girl. The money received is what is called bride-price ; and that is the essential element of the *Asura* form. The fact that the rites prescribed for the Brahma form are gone through cannot take it out of that category, if there was pecuniary benefit to the giver of the girl. The Hindu law-givers one and all condemn such benefit and the *Shastras*, regarding it as an incurable sin, prescribe no penance for the sale of a bride. (See the *Agni Puran* cited in *Shudra Kamalakar*, page 108).

Under the Hindu law, certain forms are common to both the Brahma and the Asura form of marriage. Unless those forms are gone through, the relation of husband and wife is not (438) brought about in either case and there can be no marriage tie.

But what distinguishes the one form from the other is that, in a Brahma marriage it is a gift of the girl pure and simple ; in the Asura, it is the sale of the bride for pecuniary consideration. If the sale exists, its effects cannot be undone by the form of a gift being gone through.

In the course of the decision in I. L. R. 33 Bomb. 456, he refers respectfully to the logical basis of the *Mitakshara*.

The question of Hindu law in this Second Appeal is, when a married Hindu woman dies, leaving no issue, and the competition for heirship to her *stridhan* is between her husband and a son by another wife of the latter, who is entitled to the property—the husband or the step-son of the woman ?

The argument for the appellant just stated comes in effect to this, that *Vijnaneshwara* intends to use the word "sons" in its primary sense, that is, in the sense of sons born of the woman, where such sons are living at her death ; but that he uses the same word in its secondary sense, meaning sons of a rival wife, if she has left no sons

of her own. But we cannot ascribe to Vijnaneshwara this double interpretation of the word without charging him with the violation of a well known rule of *mimamsa* or construction that "in the same passage a word occurring once cannot be taken in its primary and in its secondary sense". Such construction of one and the same word occurring in a text or a rule, involving two interpretations at the same time, is condemned by the commentators on Hindu law as "illogical", as may be seen from the remarks of Nilakantha in the *Vyavahara Mayukha* in the chapter on "Determination of Heritage".

He derives the rudiments of the law relating to Hindu trading families from the *Smriti* texts in the case reported in I.L.R. 34 Bom. 76.

It is true that neither any *Smriti* nor authoritative commentary on Hindu law expressly recognises any such law with reference to a joint Hindu family carrying on a trade in the capacity of a firm or to any other trading firm. But it follows, I think from certain general principles laid down by some of the *Smriti* writers and their commentators that, where such a family embarks on a trade for the purposes of its livelihood, it is bound by all the rules and laws applicable to that trade.

According to Hindu law-givers, from Manu downwards, traders formed a part of the Hindu polity, and the profession of trade was meant for the third and last of the twice-born castes, namely, Vaishyas. The Brahmins and the Kshatriyas were allowed to trade only in case of necessity and in times of distress. There are special rules laid down for traders. Where a caste or a joint family takes to trading and that is handed down from one generation to the next and so on, it is called a trading caste or a trading family and trade becomes its duty or practice. In that case the duty or practice is called *kulachara*. The *Smriti* writers and the commentators all lay down the injunction that the king should see that *kulachara*, meaning the duty of every family or caste, is properly preserved. (See *Smriti* No. 343 of *Yajnayavalkya* in the *Acharadhyava* of the *Mitakshara*, Moghe's 3rd Edition, p. 100.)

These preliminary considerations of Hindu law must be borne in mind at the outset in the present case, because, in my opinion, they show that a joint family, which carries on a trade handed down from its ancestors, becomes a trading family; trade being one of its *kulacharas* it attracts to itself all the necessary incidents of

trade. The members of such a family may indeed not be partners in the strict sense of the term, because their relations *inter se* are those of co-parceners. But the definitions given of partnership both in the Vyavahara Mayukha and the Mitakshara is that where several persons, such as traders, etc., carry on business jointly it is *sambhuya samuthanam*, *i.e.*, partnership. Vijnaneshvara uses the same expression, *samubhuya samuthanam*, *i.e.*, partnership in explaining Yajnayavalkya's Smriti relating to an undivided family. The Smriti is that "if the common stock be improved, an equal division is ordained". On this Vijnaneshvara's gloss in the Mitakshara (as translated in Stokes's Hindu Law Books) is: "Among unseparated brethren, if the common stock be improved or augmented by any one of them, through agriculture, commerce or similar means, an equal distribution nevertheless takes place; and a double share is not allotted to the acquirer". (Stokes's Hindu Law Books, page 390, s. 31.) This translation, I venture to think, does not bring out the force of the original. It ought to be as follows:

"If the common stock of undivided brothers be collectively augmented in partnership for (the purposes of) agriculture, trade, or the like, by one of them, the partition shall be equal and a (78) double share shall not be allotted to the person augmenting". This gloss shows that co-parceners in a joint family become partners, when they trade in unison. I say it shows that because Vijnaneshvara speaks of their union in that respect as *sambhuya samuthanam*, which is also the expression used in his Chapter on Partnership at 253 of Moghe's 3rd Edn.

There is a Smriti of Brihaspathi, according to which companies of tradesmen "should adjust their disputes according to the rules of their own profession". (Sacred Books of the East, Vol. 33, Part I, p. 281, para 26.) Nilakantha in his Vyavahara Mayukha cites Bhrigu as ordaining that "traders, cultivators of land and artisans must be made to pay" (their debts), "according to the custom of the country". (Mandlik's Translation, p. 109.) That includes mercantile usage.

The rule of Hindu law that debts contracted by a managing member of a joint family are binding on the other members only when they are for a family purpose, is subject to at least one important exception. According to a text of Yajnayavalkya, "among herdsmen, vintners, dancers, washermen, and hunters (79), the husband shall pay the debts of his wife", and the reason stated to be that "the livelihood of the family depends" upon the wife. (Mandlik's Translation of the Vyavahara Mayukha, p. 114, II, 35 & 36.) In his gloss upon this text Vijnaneshvara in the Mitakshara points out that the reason assigned in the text for this exception shows that the rule applies to similar cases. Aparaka states that this is an exception to the general rule relating to families. Balaambhatta in his commentary on the Mitakshara points



SIR NARAYAN CHANDAVARKAR

out that the specified cases in the text are not exhaustive but illustrative and that the principle applies to all alike—Brahmins and others similarly situated. That is, the term "wife" in the text stands for the *kartha* or manager of the family and the terms "herdsman, etc." stand for its members carrying on a family business. From this text it follows that where a family carries on a business or profession, and maintains itself by means of it, the member who manages it for the family has an implied authority to contract debts for its purposes, and the creditor is not bound to inquire into the purpose of the debt to bind the whole family thereby, because that power is necessary for the very existence of the family. Whether the debt was contracted for the purpose of the family profession or not, it binds the members.

Where a minor is a co-parcener in a joint family, his share in the family property is liable for debts contracted by his managing co-parcener for any family purpose or any purpose incidental to it. If the family is a trading firm, the same rule must apply with this difference that the term *family purpose or purpose incidental to it*, must here give way to the expression *trading purpose or purpose incidental to it*, having regard to the nature and object of the family business. The circulating of a negotiable instrument is in the case of a joint family trading as a firm, necessary for its existence and its purposes. It is a necessary incident of the carrying on of the trade. Without it the firm could not gain credit in the market and prosper. The minor's share is therefore bound by it, since it constitutes an obligation of the firm. This conclusion arises in my opinion from the principles of Hindu law with which I have dealt in the earlier part of this judgment. It is unnecessary, therefore, to invoke the aid of either section 247 or any other provision of the Indian Contract Act.

This judgment of his is suggestive of the possibilities of the development of Hindu law to suit it to modern conditions without the extraneous influences of the British system of jurisprudence.

In the following passage, Chandavarkar, *J.*, defined the duty of a Hindu husband to maintain his wife even if she were unchaste :

The general rule to be gathered from these is that a Hindu wife cannot be absolutely abandoned by her husband. If she is living an unchaste life, he is bound to keep her in the house under restraint and provide her with food and raiment just sufficient to support life; she is not entitled to any other right. If, however, she repents, returns to purity and performs expiatory rites, she becomes entitled to all conjugal and social rights, unless her adultery was with a man of lower caste, in which case, after

expiation she can claim no more than bare maintenance and residence. He (Yajnayavalkya) says that the same expiatory rites that are prescribed for degraded men are ordained in the case of degraded women too, with this difference, however, that in the case of such women, even after their purification by means of expiatory rites, they do not become entitled to restoration of the conjugal and social rights which they had before degradation but they must be allowed to live "near" the house, provided with bare food and scanty clothing just to keep body and soul together, and they must be guarded. Literally interpreted, this would seem to apply to all degraded women, who have undergone purification. But Yajnayavalkya points out, in his remark introducing the next verse of Yajnayavalkya that it applies only to a particular class of women, that is, to those whose degradation was caused by one of the sins considered deadly. It is such women only who, even after purification, must be *abandoned*. That is while they become entitled to bare food and raiment and residence, they must be treated as "unfit for the purposes of conjugal rights and the performance of religious ceremonies". That is the definition and meaning of abandonment (*tyaya*) as given by Vijnaneshvara in his gloss on one of the verses of Yajnayavalkya in the first set of texts above noticed.

As is pointed out by Nilakantha in his *Prayashchitta Mayukha* the word *tyaya* (abandonment) is explained in the *Mitakshara* as meaning the discarding of a woman so far as conjugal relations and religious ceremonies are concerned, but it does not mean driving her out of the house (that is, the husband's). No question of abandoning a woman for the purpose of conjugal relations and religious ceremonies can arise except as between a husband and his wife. The important question is whether this latter set of texts applies to the case of an unchaste widow or whether it applies only to the case of an unchaste wife. The learned Subordinate Judge thinks that the language of the texts is wide enough to cover both the cases. Nilakantha in his *Prayashchitta Mayukha*, in the course of his discussion of the question as to the right of degraded women to the performance of expiatory rites, cites some of the texts and along with them he quotes a text of Parashara which provides that "a woman who conceives a child from a paramour when her husband is either dead or is not to be found or has gone abroad, should be regarded as degraded and sinful and driven out of the country". Nilakantha explains "driven out of the country" to mean "driven out of the house".

This text of Parashara, which includes the case of a widow, is explained by Madhavacharya as relating only to a woman who is leading a life of unchastity, is unrepentant and has not performed expiatory rites. As to a woman, whether she is wife or widow, who returns to a life of chastity after she has been unchaste, Madhavacharya explains that she, after expiation, cannot be cast out of the house, but that she must be maintained.

Mistakes in the interpretation of Hindu law arise often from the judges not being acquainted with the manner of presentation adopted by the commentators and Smriti writers. One such common mistake is referred to and corrected by Chandavarkar, *J.*, in the following passage :

In urging before us that in this passage Nilakantha does no more than express the opinion of those who differ from the Mitakshara without stating his own view, the respondent's pleader loses sight of the fact that the form of expression used in the passage is not uncommonly employed by an author in Sanskrit when he means to state his own view on a point under discussion. He would first state the opinion of the author from whom he means to differ, and then express his own opinion by using such language as "others, however, say"—(परे तु or अन्ये तु both of which have the same meaning in Sanskrit). Another mode of expressing dissent from the opinion of an author is to state that opinion and say: "Some, however, say (केचित्त). Of this form of expression, however, it must be observed that more than the other form, it depends on the context whether it should be interpreted in the same sense as the expression: "Others, however, say," because the word "others" is *prima facie* more comprehensive than the word "some". There is yet a third mode. When an author differs from older authors on a point, he states the opinion of the latter as that of "ancient authors" and expresses his dissent in these words: "Modern authors" (*वरचुहा* or *naryaha*) "however, say". By "modern" the writer is presumed to refer to himself as one falling in the category of authors later than the ancient.

The reason why this indirect form of language is not uncommonly used to express dissent is, that it is considered unbecoming and presumptuous on the part of a writer to adopt such expressions as "I think so", or "I say so", or "I am of opinion", especially when he is differing from another author of repute and recognised authority. It is regarded as a mark of culture and scholarship for an author to express his own opinion modestly and humbly, in differing from another. When he states the latter's opinion and then says, "others, however, take a different view", by "others", he implies his "own humble self".

This mode of expressing dissent is employed, for instance, by Nagoji Bhatta in his *Paribhashendushekhar* (page 106, last line: Kielhorn's Edition), and his *Shabdendushekhar*. It is adopted also by Jagannatha in his *Rasagangadhar* (*Nirnaya Sagara* Edition, page 276 and page 501). Among Sanskrit scholars it is a rule of construction that, when these forms of expression occur in a work, they should be interpreted, generally speaking, as meaning that the author who uses them intends thereby to represent that the dissenting opinion is either his own or is shared by him.

Nilakantha, therefore, in the passage above quoted from the *Mayukha*, may be fairly presumed to have dissented from the opinion of the *Mitakshara* and to have stated it as his own opinion that both sons and daughters are joint heirs to the *anvadheya stridhan* of a woman.

This interpretation of Nilakantha's meaning is confirmed by what follows immediately after the passage quoted above from the *Mayukha*.

These considerations coupled with the fact that, in dealing with the question of succession to *stridhan* property, Nilakantha treats the two forms of technical *stridhan*, known respectively as *anvadheya* (a gift subsequent) and *priti datta* (gift through affection) separately from the other technical forms, make it clear, beyond doubt, that, in his opinion, daughters and sons are joint heirs to the former and share equally.

An example of another correction of a common error in interpretation is the decision reported in I. L. R. 34 Bom. 559.

It is contended before us that the son inherited, because the law as to *stridhan* is, that a woman's son is heir to it before her husband. But that law applies to a married woman, that is, one whose marriage was celebrated according to one of the recognised forms. When the text-writers say that the *stridhan* of a married woman, who has died "without issue", goes to her husband, if she was married in one of the approved forms, the words "woman" and "husband" were intended to be used as correlative, or as *Vijnaneshwara* in another part of the *Mitakshara* terms it, in the *prati-yonyika* sense, to show that the issue contemplated was issue of the woman, by her husband and none else. Therefore, where a woman was married according to the approved form, the terms "dies without any issue" means issue of that marriage! There is no authority whatever in the Hindu law for the proposition which is contended for Mr. Pradhan, that, when the competition is between the husband and a son born of the woman by adulterous intercourse, that son supersedes the husband as heir to the *stridhan*.

In I. L. R. 35 Bom. 293, he explains clearly the scope of the Hindu law presumption against partial partition in these terms: "According to Hindu law, he who alleges partition must prove it, because "once is a partition made". If it is proved that there has been a breach in the state of union, the law presumes that there has been a complete partition both as to parties and property. The presumption in question continues until

it is rebutted by proof of an agreement which means proof of intention on the part of some to remain united as before and to confine the partition to the rest, or, if the partition was intended to extend to the interest of all individually, there must be proof that some of them re-united."

Sir Narayan Chandavarkar was, to use a colloquial expression, an all-round judge. His scholarship was not confined to the rich fields of Hindu law alone; he was quite at home in the discussions of principles of Mahomedan law, of Company law and of Insolvency law and in the interpretations of Indian statutes. As examples of his intimate acquaintance of all branches of law, the following passages from a few of his judicial pronouncements may be cited :

(1) The decision in I. L. R. 35 Bom. 386 deals with a knotty problem on the Mahomedan law of dower.

Next it is urged that in the case of prompt dower, the right of the wife is dependent upon, and does not arise until after, consummation of the marriage. According to Mahomedan law, marriage is a civil contract and dower is a necessary result of it, being a part of the consideration for her agreement to become her husband's wife by consummating the marriage: *Masthan Sahib v. Assan Biri Aimal*. Consummation is not a consideration for the marriage contract but is performance of the contract. Prompt dower (*maajjal*, as it is called) is payable immediately on the marriage taking place, and it must be paid on demand. If it were payable on consummation, the authorities on Mahomedan law would have said so instead of using the word "demand".

(2) The decision in I. R. 35 Bom. 264 deals with the effect of conversion on personal law.

His case is that the Girasias when they became Mahomedans, carried with them the law of inheritance and successions, and that, as part of that law, they also retained the Hindu law and custom of adoption. But adoption is not necessarily inheritance or succession, although it leads to inheritance or succession. The Mahomedan law does not recognize adoption. The presumption is that, as a necessary consequence of conversion to Mahomedanism, the law of

adoption recognized by Hindu law and usage had been abandoned by the Girastas. Therefore those who allege that the usage and law in question had been retained must prove it.

(3) In I. L. R. 34 Bom. 579, Chandavarkar, *J.*, gave an equitable interpretation to section 244 of the old Civil Procedure Code :

In dealing with the *darkhast* it will be competent for the Subordinate Judge to consider whether, apart from the appellant's right to execute the decree in spite of his deed, his conduct in seeking execution has been fraudulent so as to render him liable to a criminal prosecution. Fraudulent executions of decrees must be discouraged by the Courts whenever they come to their notice; and decree-holders, who enter treacherously into adjustments outside the Court and do not certify them as required by law, but fraudulently apply for execution, ignoring the adjustment, should be dealt with under the Criminal Law.

It is, however, supposed that the Court is debarred from recognising in any way any payment or adjustment unless it is certified by the decree-holder or proved by the judgment-debtor in accordance with the special procedure provided by section 258. To so suppose is to run counter to the provisions of section 244 which provide that the Court executing the decree shall determine any question between the parties relating to the discharge of the satisfaction of the decree, and if what is supposed to be the effect of the law be in truth its effect, it leads to a very singular result; for it means that a decree-holder may fraudulently apply to execute a decree twice over.

Another noteworthy interpretation of a statute is his judgment in I. L. R. 35 Bom. 473 in course of which he said :

Here, again, the language is insufficient to take away the right of suit which every person had against the insolvent before he became bankrupt, and which right the stranger continued to have as against the Official Assignee, as the legal representative of the insolvent. All that this section provides is, that any person aggrieved by any act of decision of the Official Assignee may appeal to the Court, which means that if a person does feel that injustice has been done to him by any act of the Official Assignee, it is open to him to ask for redress at the hands of the Insolvency Court. But that does not shut out the jurisdiction of the ordinary Court.

His discussion of the right of a shareholder to inspect the register of shareholders containing their names and addresses has been approved by the Privy Council.

That is a legitimate object—as specific and definite as any object can be; he cannot attain it unless he is able to get the co-operation of other shareholders; and, before he can secure their co-operation, he must know who they are. And that he can know only by inspecting the register.

It is but reasonable that a shareholder of such a concern should desire from time to time to consult other shareholders and discuss with them the affairs of the Bank for the purpose of taking concerted action, where and when necessary, apart from any question of any irregularity existing in the management of the Bank. And for that purpose inspection of the register of shareholders is necessary to enable him to find out who the shareholders are whom it would be worth his while to consult and whose co-operation he should seek. Other books and records of the Bank may stand upon a different footing; where inspection of any of them is claimed other and stricter considerations might apply. But why should it be necessary for a shareholder to prove more than his desire to communicate with other shareholders in the event of necessity, where he asks to be allowed to inspect nothing else than the register containing their names, addresses, etc.? It is to his interest as it is to theirs that they should consult and be in touch with one another in matters affecting the affairs of the Bank. The Bank cannot lose by such consultation or discussion or co-operation on the part of individual shareholders unless the inspection is sought for some fraudulent purpose or some purpose prejudicial to the Bank.

He explained in another able judgment the limits of the rule of procedure which enables defendants in partition suits to obtain decrees:

And on principle that must be the essential condition of the rule. When a suit for partition is brought by a person alleging that it is undivided property and that he has a certain share in it, the law requires that in order to enable the Court to ascertain such person's share, it must have before it as parties to the suit all the persons admittedly having or claiming to have shares in the property. Otherwise there cannot be a valid, final and binding decree for partition. The quantum of the share of the plaintiff must be determined with reference to the number of sharers and their respective shares. And such determination of the shares being essential for the determination of the plaintiff's share, enables the Court to pass a complete decree for partition, allotting to each party, whether he is plaintiff or defendant, his share. In such a case it is obvious injustice that a defendant should be driven to another suit to have his share already determined partitioned off. That is the reason of the rule. But where the case of the plaintiff fails on the preliminary ground that he has no right to a share at all and that a suit for partition is

not maintainable at his instance, the reason of the rule fails to apply. There is nothing on which a defendant's right to have his share ascertained and awarded in that suit can rest. The defendant was brought in for determining the share of the plaintiff, if any. If the plaintiff is found to have no share at all, there is no suit for partition and consequently no necessity for determining the defendant's share. To hold in such a case that, notwithstanding the plaintiff's failure the defendant is entitled on his own account to go into and try the question whether he has any share at all, would be to convert a suit brought by an unsuccessful plaintiff into a suit brought by another person placed on the record as a defendant for the purpose of determining the *quantum* of the plaintiff's share in the event of the plaintiff proving that he has a right to some share.

These passages extracted from his numerous judgments will be found sufficient for the purpose of showing that Sir Narayan Chandavarkar's judgments were uniformly characterised by a thoroughness, a lucidity and a masterly elaboration of details which are not often met within the pages of the law reports of the Bombay High Court.

OTHER ACTIVITIES

Sir Narayan's educational activities were many and most beneficial. For many years he was the President of the Students' Brotherhood. Its aim is to develop the spirit of true character in young men. With unexampled zeal and enthusiasm, Mr. Chandavarkar impressed upon the rising generation of Indians the importance of the development of character, of truthfulness, sobriety and the "enthusiasm of humanity"—a favourite phrase of his. Mr. Chandavarkar felt then, as we feel now, that the hope of India's regeneration lies mainly upon the young, and that the best way by which the elders can serve their motherland is by bringing up their young in proper ideals. The Students' Brotherhood contained in its fold no greater enthusiast than Mr. Chandavarkar himself. Years ago in 1888, Mr. Chandavarkar lectured at the Wilson College Union, on "The Aims and Responsi-

bilities of Students". The late Mr. Justice John Scott presided, and the lecture was so much admired that the late Mr. Murdoch published it in pamphlet form. In 1899, Mr. Chandavarkar delivered another lecture before the same society, Sir Raymond West presiding. It was replete with noble thought and inspired high sentiments. In these days when the study of poetry is so much neglected, it may be well to point out that Mr. Chandavarkar was an ardent student of both English and Indian poetry, his chief favourites being Wordsworth, Tennyson and Browning; he had also studied other poets and his speeches and writings always have some sparkling gems of the best of poetic writers. Among Indian Poets, the religious Poet, Tukaram, had a fascination for him. Recognising his work in the student world and his interest in education, Lord Curzon appointed him the Bombay Member of the Educational Commission in 1902 and, in 1906, his unabating and exemplary efforts to raise the tone of education in India, and the Western Presidency in particular, received crowning laurel at the hands of his Excellency Sir George Clarke (now Lord Sydenham), who appointed him Vice-Chancellor of the Bombay University in succession to Dr. Selby. On the eve of his retirement, the University conferred on Dr. Selby the Honorary Degree of Doctor of Laws, and Mr. Chandavarkar was selected to present the recipient of the honour to the Chancellor, Sir George Clarke, at a meeting of the Senate which was largely attended. Mr. Chandavarkar enumerated Dr. Selby's claims as a scholar, as a student, and as an educationist, in an eloquent address, conceived in powerful language, which was heard with rapt attention. In the same year as Vice-Chancellor of the University, he delivered his first convocation address. That was a plea for keeping students away from politics

and political controversies. The address was much praised, because of the way in which Mr. Chandavarkar supported his arguments by reference to ideals of education in ancient India and modern Europe. His second convocation address was noteworthy, not only as a model of diction but for the thought and scholarship it indicated. He described the want of proper parental control as the root-cause of the Indian unrest. At the close of it, Sir George Clarke spoke of Chandavarkar as one of those who have always been heard with respect and admiration.

THE REFORMER

Mr. Chandavarkar was a Brahmo by faith and a social reformer by conviction. He advocated social reform both by precept and by example. He had no scruples of caste or creed and observed no racial distinction either in theory or in practice. He was the general secretary to the Indian Social Reform Conference and was regarded as a leader of Social Reform Movement throughout India. He was also the President of the Students' Literary and Scientific Society. The education of women, the re-marriage of child-widows, the removal of caste restrictions on foreign travel were some of the subjects which engaged his attention.

As a Brahmo and as President of the Theistic Church (Prarthana Samaj) in Bombay, Mr. Chandavarkar was a man who was full of reverence for religion and one who had thought over and formed mature views on the religious future of his countrymen. The one great effect of English education in this country is, that it has been largely instrumental in shaking old foundations of absolute faith and many events have shown the danger which is haunting the English educated youth who, on many occasions, have drifted from the extreme of absolute faith to the extreme of absolute scepticism, from religion to no religion. The non-

religious character of the Indian student has been a subject of profound thought on the part of many of the Indian elders, and attempts have been and are being made to lessen the secular tinge of the modern school education and bring into school some sort of a religious atmosphere. Mr. Chandavarkar was one of those who believed in the efficiency of religion, and who are convinced that a man is not likely to follow the moral principles which are enjoined by all religions unless he believes in a superior sanction than of all that earthly law or even the promptings of his conscience. He, therefore, held that the pristine system of theism which is inculcated in the *Vedas* should be brought back divested of all later ceremonials and developments. Mr. Chandavarkar's religious speeches are all worthy of particular attention, for he unites with the deep fervour and piety of one who wants to build up the character of his countrymen on the solid foundations of a belief in the unity of God and the tenets of a pure system of *Vedic* theism.

Chandavarkar's activities were extremely varied, but they were all inspired by his singular humanity. Every institution that aimed at raising the unhappy lot of man claimed his attention and had his sympathy. He was connected with the Nursing Association of the Sir Jamsetjee Jeejeebhoy Hospital. He was a member of the Executive Committee of the Society for the Protection of Children and of the Society for the Prevention of Cruelty to Animals, and Vice-President of the former body. He was the President of the Bombay Branch of the Royal Asiatic Society.

In the case of a man like Mr. Chandavarkar whose activities were as numerous as there were useful institutions in the country, Government recognition comes as a matter

of course without any hunt for it. It may be, sometimes, that honours are not well bestowed upon proper persons ; it may be that some who obtain honours are persons who have been hunting for them both day and night. But the case of Mr. Chandavarkar was different. Mr. Chandavarkar had attained the position of the highest judge in the highest judicial tribunal of his Presidency. As Vice-Chancellor of Bombay University, he had guided the educational policy of the Presidency for many years. The Public, by electing him to the *gadi* of the great national assemblies like the Congress and Conferences, had bestowed upon him the highest honours which were within their power to bestow. He had been for many, many years lending a strong helping hand to all the reform movements and to many institutions of public utility. So when, on 1st January 1910, his late Majesty King Edward VII knighted Mr. Chandavarkar, it was acknowledged on all hands that title was worthily bestowed. Sir Narayan was entertained by several institutions to mark their sense of congratulation on the honour conferred upon him. The most notable of these gatherings was that of the Students' Brotherhood which, wishing to commemorate the event in some singular manner, obtained the permission of the Government of India to make a presentation to him for his most valuable and unique services to the Brotherhood. That permission was readily granted, and Sir George Clarke, Governor of Bombay, presided at the function on the 14th March 1910. The Brotherhood presented Sir Chandavarkar with an address in which his public services were mentioned in eulogistic terms, and in handing him a beautifully designed silver casket on behalf of the Brotherhood, Sir George Clarke paid him a high tribute. Said His Excellency :

No one can value more highly than I do those qualities which have been referred to in the address. It has been my great fortune to have been often in contact with Sir Narayan Ganesh Chandavarkar and to have heard his opinions on many subjects. To me this had been a great gain, and I well understood how highly his great knowledge, sobriety of judgment, broad sympathies and true kindness of heart have endeared him to all communities. It is not only as a wise and conscientious judge that Sir Narayan is known and will always be remembered. He stands out as a type of which India possesses but few examples at a time when there is supreme need for sober counsels and lofty guidance.

Sir George Clarke concluded by describing Sir Narayan as one of the greatest citizens of Bombay.

DEWAN OF INDORE

Sir Narayan's tenure as a judge came to a close in 1913 and he retired from service full of honours. During his twelve years of judgeship, he had won the respect and admiration of all, and his retirement was keenly felt both by the Bench and the Bar. Sir Narayan, though he retired from service, could not retire to well-deserved rest. His talents were requisitioned everywhere, and the Maharajah of Indore was too glad to have him as his Prime Minister. Sir Narayan became the Dewan of Indore State in 1914, and he did a great deal in overhauling the administration of that State. He actively promoted the cause of free elementary education and other reforms that were conducive to the welfare of the public. But circumstances were not altogether favourable and Sir Narayan resigned his post in October 1914. Soon after he made a tour in the south and west coast of Madras Presidency and delivered many speeches. Sir Narayan took advantage of his freedom by devoting a great deal of time to the political affairs of the country. And the manifesto which appeared under the joint signatures of himself, Sir D. E. Wacha, Mr. N. M. Samarth and others when the late Mr. Montagu, the Secretary of State for India,

was here, contains possibly the best exposition of the Congress-League scheme.

THE MONTAGU REFORMS

His view on constitutional reforms is fully expressed in the foreword to Mr. G. A. Natesan's "What India Wants" which is reproduced below verbatim :

The present administration in India is virtually an administration of the Indian Civil Service, which is almost entirely composed of British officials. They are indeed capable and conscientious and have done good work; but they are the slaves of a system, which makes the Service a close Service, wedded to red tape and routine, slow to discern and move with the times, jealous of outside and independent criticism and, owing to their comparative aloofness from Indian society, due to social and other causes, more or less out of touch with, because unable to find out, real Indian sentiment and public opinion. The result is that, in important matters affecting the Indian conditions, knowledge comes too late to the Service, and to the Indian administration which it practically controls, too late, i.e., after things have gone wrong, public dissatisfaction has become acute and mischief has been done. Some of the best members of the Service have themselves admitted that For instance, refer to the speech of the late Mr. Crosthwaite on the Jhansi Encumbered Estates Bill in the Imperial Legislative Council in May 1882, and to Mr. George Campbell's speech in the House of Commons on February 28, 1879.

The Mesopotamia Commission's report, condemning the system of Indian administration, only repeats the lessons of the Mutiny of 1857, of the Orissa Famine of 1866, of the sensational muddle of the Indian finances in 1880, of the famine administration of 1877, and of the legislative and administrative measures relating to the chronic indebtedness of the Indian *ryot* (agriculturist) and to the land revenue systems of India and to the partition of Bengal.

As Lord Northbrook in substance said, when he was Viceroy, in a despatch of 1875 to the Secretary of State for India, and subsequently also in the House of Lords, the present system of Indian administration suffers seriously for want of a constitutional machinery fitted to find out Indian sentiment and public opinion as the basis of legislative and administrative and especially financial measures.

There can be no other way to remedy that serious defect of the system than to provide a constitution which shall make the administration primarily and at one end responsible to Indian public opinion, and finally, at the other end, to the British Parliament.

I am, therefore, generally speaking, in agreement with the proposals for Indian reform made in the memorandum of the nineteen non-official Indian members of the Imperial Legislative Council and in the scheme adopted by the National Congress and the Muslim League at their respective sessions held at Lucknow in December, 1916. The best merits of the memorandum and of the scheme is that they aim on the whole at what Lord Ellenborough, who had been Governor-General of India for some years, and afterwards President of the Board of Control during the regime of the East India Company, wrote in 1859: "We must abandon the exclusive British system and nationalise our Government."

The memorandum and the scheme have been condemned in some quarters as being revolutionary on the main ground that their proposals transfer power from the Indian Civil Service, who (it is said) are best fitted to represent the masses in India, to the Indian educated classes, who (it is maintained) are not the true representatives of the masses. We may, without fear of the result in favour of the Indian educated classes, invite one test, which is a sure test, on this question. If we take the history of the administration from 1858 down to now, with special reference to the amelioration of the condition of the Indian agriculturists, who form seventy-five per cent. of the people in India, we shall uncontestedly find that measures advocated in their interests by the educated Indians through their newspapers and public associations and at public meetings had been strenuously opposed as chimerical by the British officials in India for a long time and were ultimately more or less adopted under the stress of circumstances. It is the view of the Indian educated classes regarding the ryots' lot which, generally speaking, has after more or less painful experience to some extent won; and the official view has yielded in the end.

Though a moderate of moderates, Sir Narayan did not fail to lift up his voice, whenever necessary, against the unjust acts of the Government. When the Madras Government interned Mrs. Besant, he was one of those who challenged the justice of the action. The articles which he wrote in the *Times of India* questioning the validity of the internment, will occupy an important place in the internment literature. Sir Narayan was a moderate through conviction and not through fear.

Such is in brief a sketch of the life of one of the greatest of Indians. This sketch cannot be better closed than by quoting in full the appreciation of his work and

character penned by a Christian missionary in the pages of *Dnanodaya* during the week which saw Sir Narayan's departure from Bombay as the Dewan of Indore. He says :

The departure this week of Sir Narayan Ganesh Chandavarkar to the post of Dewan of the State of Indore leaves Bombay the poorer in its forces for religious and social reform. The Prarthana Samaj, the Students' Brotherhood, the Social Service League, the Holika Sammelan Committee and other progressive ameliorative organizations in Bombay will lose thus the personal connection of one of their pioneering, inspiring and guiding leaders. Indeed, taking into consideration all varied elements which combine to make the higher life of modern Indian society, it is probably not too much to say that Sir Narayan has made himself the foremost Indian citizen of Bombay. Rising by sheer force of character and attainments, he has become Vice-Chancellor of the University, Justice of the High Court (twice being Acting Chief Justice), and a leader in most of the forward movements for social and religious progress in the city, with influence extending out into the Presidency and into national affairs too.

Aspiringness, industry, learning, determination, courage, broad-mindedness, sociability,—many excellent traits have been developed by him, and have helped to make him great. But a chief distinguishing characteristic is his spiritual appreciativeness. The things of the spirit seem to have appealed to him as the highest and the most important things. Reading and meditation on religious truths appear to be to him a delight and veritably a nourishment for his own spirit. Prayer in inter-communion with a Supreme Spirit of helpfulness seems to be a fond practice. Such an inner personal life has led to an interpretation of life in general from the higher standpoint of spiritual values. It has also appropriately prompted him to practical efforts to reform the religious and social life of the great Hindu community in which he himself was born and in which the majority of his countrymen are living. If he has not shared all the faith of his Christian friends, they, on their part, should not fail to appreciate the extent to which he has appreciated their Lord and their sacred scriptures. Indeed we are well aware that his frank and generous appreciation of the spirit of the age as being pre-eminently pervaded by the spirit of Jesus Christ (in a lecture delivered in the Y. M. C. A., Bombay), and also his open letter to the *Times of India* on the occasion of the Tercentenary of the English Bible, did produce opposition from his co-religionists, but less opposition than such utterances would have produced against a Hindu who did not occupy the eminent position in public life which Sir Narayan occupies.

Generous expression of appreciation of such a person is robbed of its ordinary dangers, because it is of a person who along with

many other admirable qualities possesses also the valuable quality of discerning humility. Sincerely eminent Brahmin leaders of religious and social reform could thus say with regard to himself and to his fellowmen what he said on the occasion last week when 5,000 people gathered to bid him farewell.

Sir Narayan was, during a life of strenuous and varied activity, a leader of political and social thought in Western India. To the end he knew no rest. He died suddenly of heart failure in May 1923, in his sixtieth year, at Bangalore where he had gone for health. Sir Narayan was a fine flower of English Liberalism, alike by his culture and temperament. By his speeches and writings, he did considerable propaganda work on behalf of the Montagu reforms and in the inauguration of the New Council in Bombay became appropriately its first President—an office which he held with distinction down to the end of his life. In his death Western India lost a scholar, a patriot, and a veteran leader of liberalism in politics and religion who was withal a judge of no mean authority in his time.

The speeches and writings of Sir Narayan Chandavarkar contain very instructive material illustrative of his great interest in all the departments of life. His deep erudition and extensive knowledge and experience made him feel quite at ease whether he spoke of social reform or of education, whether of politics or literature. His speeches show a lawyer's bent of mind and like a judge, he sifts both sides of an argument. He knew what people said on one side or the other of a question and deliberately made up his own choice. For example, he knew that it was usual for the critics of English education to say that that education was introduced into this country to manufacture clerks for the Secretariat and other Government offices. He openly disavowed any such intention and quoted authorities on the other side. He referred to Mount Stuart

Elphinstone who, in a minute on Education, dated 10th March 1824, distinctly pointed out that the scope of his plan of education was not "to provide clerks for public offices" but "to diffuse knowledge among all orders of the people of the country, and to concur with other causes in raising them in time to level with the European nations". From the annual report of the Board of Education for 1844, he picked out one or two passages which go to disprove the former view and support his own opinion and the opinion of Elphinstone. The report says :

The object of Government we take to be perfectly distinct and intelligible, namely, to make as vigorous an impression upon the Asiatic mind as possible—to rouse it from the torpor into which it has subsided for some hundred years past, and to place it in a condition for receiving and digesting the results of European progress and civilisation. Wherever we find gross intellectual darkness, we are sure to meet with grovelling superstition and the worst forms of priesthood. A lax morality is the inevitable offspring of such unholy union, and it is only by the introduction of light as a sort of moral policy, that any effectual warfare can be expected to be waged against these enemies of the human race :

For truth has such a look and such a mien
As to be loved, needs only to be seen.

EDUCATIONAL

It will be remembered that Sir Narayan Chandavarkar was for a long time the Vice-Chancellor of the Bombay University. The honour conferred upon him was in recognition of his services as an educationist. Sir Narayan had always been very fond of students and had spent a great deal of his time among them. He had been actively connected with the Students' Brotherhood and various other institutions concerned with the welfare of boys. As such he had an intimate knowledge with the tastes and aspirations of young men and had tried, according to his lights, to carefully guide such aspirations into proper channels instead of obstructing them. In his address on the

“ Responsibilities of Students ”, he gave free expression to his views on social, political and religious matters for the benefit of the students. The following passage is a sample of the general tenour of his speeches to young men :

Political activity, political agitations, are certainly good. They have their value and I do not for one moment mean to ignore their value. But what we do with one hand let us not undo with the other. Let not the principle of elevation which we try to infuse into our people by means of our political activities and National Congress, be allowed to be counteracted by the principle of fatalism, which our present social arrangement and our present religious beliefs teach them. Let us reform and correct the latter, so that our political activities may be helped and supported, instead of being opposed by them. That is, while we teach the people to be politically great, let us not forget to tell them that their religious and social ideas should be as much improved as their political ideas—that the former should be of an enlightened and elevated character equally with the latter.

In the same address, Chandavarkar gave a very impressive definition of the high ideal of duty. He said :

A high ideal of duty implies, firstly, cherishing the conviction that you are born, not for yourselves but for your country; secondly, it implies rendering service to your country dispassionately; thirdly, rendering that service dispassionately in all those matters, political, social and religious, on which the country's welfare and progress essentially depend. Thus, then, I define a high ideal of duty to consist in cherishing the conviction that each one of you is born to serve your country dispassionately so far as you can in political, social and religious matters so as to secure that country's progress all along the line.

To Sir Narayan Chandavarkar, political aspiration, by itself, was insufficient; it must be sustained and supported by action in the social and religious field. And he exhorted the young men to have moral courage which means “that a man who thinks and feels that a certain thing is right, stands by his opinions and convictions, adheres to them faithfully and unflinchingly, looks to no public applause or favour, but does his best to act up nobly and fearlessly to his principles”. In the paper on “Aims of Life”, he says : “Each individual is a force, whether for

good or evil, however poor and humble he might be." Be strong, be brave and be modest, this is the burden of his message to young men.

CHANDAVARKAR AND TELANG

Sir Narayan Chandavarkar had always cherished the highest admiration for the late Mr. Justice K. T. Telang. His address on "Mr. Justice Telang as a Student" is an illustration both of his great respect and of his own gifts for biography. With a few simple but striking touches, he calls up the figure of Mr. Justice Telang as he was a student to the end of his life. After dealing both with Telang's attitude of mind and methods of study, after describing Telang's love of literature and his capacity to think and criticise, he comes at last to the aim of life as gathered from Mr. Telang's life :

To be thoughtful, to be fair, to be reverential, and, above all, to be pure--this must be the aim of life. Telang attained it because he began life as an earnest and honest student, and remained so throughout his life. Hence he learnt to approach all questions with the dignity, the truthfulness and the suavity of a cultured man and he was a cultured man because he was a true student.

CONVOCATION ADDRESS

Sir Narayan Chandavarkar had the unique honour of twice delivering the convocation address to the new graduates of the Bombay University. Knowing as he did intimately the budding products of University education, he has always felt that the English educated man is not such a godless being as he is depicted by some to be.

"I have no concern," he says in the first address, "that we are or ever shall be a godless people. Godlessness is not a charge that can be justly brought against either our youth or our educated men. The spiritual faculty is innate in us and the sense of the supreme soul which we drank in as it were with our mother's milk, if I may say so, cannot disappear merely because the education we are given is secular."

These addresses were delivered at a time when great changes in the University courses of study were being considered, the main object of which was to give science a more important place than it had occupied in the past.

POLITICS

Sir Narayan Chandavarkar had no doubt presided over the Indian National Congress, Bombay Provincial Conference, delivered a number of speeches and written many articles dealing with political subjects. But, all the same, his real interest had never been in secular politics. To him religion and social reform were the foundation of all politics, and he had been concerned more with strengthening the foundation than in erecting the upper edifice.

The Presidential address at the Lahore Congress, delivered as it was on the morrow of a great famine, dealt almost exclusively with the position of the ryot and the means of improving it.

In the Bombay Congress of 1915 under the Presidency of Sir S. P. (later Lord) Sinha, Sir Narayan Chandavarkar was entrusted with the resolution about the military and naval training and volunteering of Indians. The War had brought this problem within the field of practical politics, and Sir Narayan was not slow to perceive it. In the course of the speech, he referred the audience to the experiment made by England in sending Indian troops to Europe in 1800, and at the beginning of the Great War. He supported the fitness of Indians for general military service on the testimony of Sir John Malcolm and Sir John French who respectively, in 1800 and 1915, gave public recognition to the signal proofs of bravery and

fitness which the Indian troops had given. The speech contains one notable paragraph which cannot be omitted :

England's cause is India's, they rise or fall together. That was the comment which you made on Lord Bryce's statement. May I be permitted to offer another comment on the false prophecy of Lord Bryce—and I make that comment in all humility, because Lord Bryce happens to be one of the celebrated and acknowledged historians of our times, and I am but a feeble and humble student of history. And yet even a feeble and humble student of history may be able to throw light on the lessons of history if he is careful to mark the movements of nations from times ancient. It may be true that if England had stood alone, if England had remained insular, she might have become mighty like other nations that have stood single. While that law of history as derived from its lessons may be acknowledged to be correct, a greater, a higher, a more sacred law stands writ large on the record of nations and the pages of history, and it is this : Once a nation, which has remained isolated and single, steps out of its orbit and comes in contact with another nation with its own type of civilisation and the two nations are brought within the fold of Empire, then the law of history is that the nation which has brought within its fold the other nation,—once put upon a career of what is called Empire of Imperialism,—has no other life than the life of the two put together. And the life of the Empire, true Imperialism, means that England will live and endure and will be true to her own traditions, will have her vitality preserved and continued, by the grace of God, provided she raises India to her own level. (*Applause.*) That is the law which you and I have to bear in mind; that is the law which British statesmen have to bear in mind. And this crisis of the War has come to teach us many a valuable lesson, and this lesson in particular, that England cannot do without India, and India cannot do without England. And, therefore, united we must stand, and we can only stand united if, taking advantage of the psychological moment in the destiny of the Empire to which we are bound, British statesmanship rises equal to the occasion, gives the right-hand of fellowship and says to our educated fellow-men : "Come within the fold of our military schools and naval schools and colleges." (*Applause.*)

As regards volunteering, the basis of which, he said, is that loyal subjects should be given an opportunity of giving solid proof of their loyalty to the Crown by enlisting themselves as volunteers, he felt that the time had come when the British Government ought to open the doors of volunteering to our people.

LITERARY

Sir Narayan Chandavarkar was a great student of English literature. Wordsworth was his special favourite. He gave twelve discourses on Wordsworth's "Prelude" to weekly classes of the Students' Brotherhood. In them, Sir Narayan Chandavarkar's love of nature and love of books had free play. Wordsworth was the poet nearest his ideal, though he did not fail to see, as he observed to one of his friends, one day, that a study of Wordsworth has a tendency rather to confirm Indian students in their instinct for contemplative quietism. Wordsworth's philosophy has much in common with Hindu conceptions of the Universe and the points of resemblance are brought out in a very striking manner in some of these discourses. The address on "The Woman Soul" calls for special mention. The important part which woman has always played and is destined to play in the evolution of humanity towards higher ideals was a favourite theme, and the lecture which was delivered at a meeting of the ladies of the Bombay National Indian Association, may well form the first of a series on Indian heroines.

सर्वांग चन्द्रन

RELIGION

A Brahmo by faith, Sir Narayan was deeply religious in the true spirit of that word. To him religion was not a matter of set forms, but a matter of life. In his addresses—social, political and literary—the religious motive is always very near. Some of the principal thoughts which appear again and again in his religious utterances may be mentioned. The following passage, like some other passages, is taken from the introduction contributed Mr. K. Natarajan, the talented editor of the *Indian Social Reformer* to "The Speeches and Writings of Sir Narayan Gauesh

Chandavarkar", and it gives us a summary of these thoughts and utterances :

Nature gives us the clue to God's ways. In society, God's ways are best revealed in the manner of little children and in the simple, unsophisticated lives of the common people. The small things of life count far more in spiritual development than the great things of which people talk most. There is no distinction between men's duties as religious, social and so on. Every duty is a religious duty, and the realization of religion is through faithful dealing in every day life. Some of the summaries of the sermons are fragmentary. Moreover, they convey no idea of the force and power which impressed the audience at the time when they were spoken. One of the best illustrations is the last noble sentences in the sermon on the late Mr. Justice Ranade, closing with the calm assurance that "He watches us from his place above".

Where meteors shoot, clouds form,
 Lightnings are loosened,
 Stars come and go ! Let joy break with the storm,
 Peace let the dew send !
 Lofty designs must close in like effects ;
 Loftily lying
 Leave him—still loftier than the world suspects
 Living and dying.

The aptness and felicity of the grand lines of Browning in the context may be said to be typical of Sir Narayan Chandavarkar's happiest vein of quotation.

सन्याम नायने

SIR C. SANKARAN NAIR

AMONG the eminent Indians of to-day, Sir Sankaran Nair easily holds a high place. His name has been familiar throughout India for over three decades in connection with different fields of public work. As a successful lawyer, as an ardent social reformer, as politician and educationist, and, above all, as Judge, Sir Sankaran Nair has made his mark for over a generation. In fact, he is the foremost among the sons of Malabar, whose efforts in the direction of social amelioration are so well known. In other parts of India as well, his acknowledged merits, his outspokenness, and his courage, have won for him a considerable measure of respect. He was the third Indian to be raised to the dignity of a Councillor in the Viceroy's Executive Council, to the responsible office of Education Minister to the Government of India. Lord Pentland remarked on his appointment that Sir Sankaran Nair would prove "not only a wise Councillor, but a man of the most progressive and public spirited instincts".

EARLY LIFE

Sir Chettur Sankaran Nair was born on the 11th July in the year of the great Sepoy Mutiny, 1857, in the district of Malabar. His father was a Tahsildar—at that time an official of no little consequence—and his grandfather had held the Sheristadarship of the Collector's office; and with such examples before him, young Sankaran Nair naturally inclined to the public service at first, and in order to obtain a footing, was ambitious of an advanced

education. When nine years old, he first attended a small school at Angadipuram and was then sent to Cannanore for secondary instruction. Mr. Watson, an educationist of considerable abilities, was then Headmaster of the Cannanore Institution and had as his senior colleagues other Europeans, so that at a very early age Sankaran Nair's character was shaped under English influences. After some time in the Cannanore school, the young student joined the Calicut Provincial High School, from which he matriculated, being first in the Presidency in the first class. In 1875, Sankaran Nair joined the Presidency College and lived in Mylapore. At that time Mr. Thompson and Mr. Porter, Educationists justly celebrated in South India, were Principals during the period 1875-77, and Sankaran Nair was brought into intimate touch with these experienced instructors of youth; and so was most fortunate in having, both in his school and college careers, Europeans as masters and friends. This intimate association Sir Sankaran Nair has, on many public occasions, acknowledged as being among the fructifying influences of his life. In passing the Bachelor of Arts Examination, he won the English and History prizes and obtained the distinction of winning the Elphinstone prize. Sankaran Nair had a decided leaning to the study of History, Biography and Economics. He has been an omnivorous reader, and his general knowledge covers a wide range. To be thorough is one of Sankaran Nair's traits of character, and he wished, after taking his B. A. degree, to qualify himself for the Bar instead of entering Government service, stimulated perhaps by the phenomenal success of Indians as Vakils and the European Barristers-at-Law of that period prominent among whom was the late Mr. (subsequently) Sir H. H. Sheppard. Declining,

therefore, to accept a good position in the Educational Department, or a clerkship in the Board of Revenue Office, Sankaran Nair enrolled himself as a student in the Law College and passed his B. L. Examination being first in the Presidency in 1879. He then apprenticed himself under Mr. H. H. Sheppard for a year, and, in 1880, was enrolled as a Vakil of the High Court of Madras. Understanding law thoroughly, his original aspiration of entering Government service tempted him to accept a District Munsifship; but the prospects in that capacity not being brilliant, he resigned his appointment after six months and resumed such practice as a very junior Vakil in those days was able to obtain, when English Barristers-at-Law held permanent sway and many Indian Vakils were fast overtaking the Barristers.

"Although," remarked a writer in the *Bombay Chronicle*, "Sankaran Nair came as a recruit to the Vakil bar, which was then handicapped by the preference given by litigants to the Barristers, he entered it with notions of individual freedom of opinion and action, which for good and bad have never deserted him."

CAREER AT THE BAR

Sankaran Nair, from the very beginning of his career at the bar, was looked upon as a rising man. Hailing from Malabar, litigants from the West Coast flocked to him, his special knowledge of the land tenures of that district and of its social customs and institutions singling him out as being peculiarly fitted to represent the grievances and difficulties of Malabar clients. Sankaran Nair was a member of the Vakils' Association, which body at that time passed a resolution that no Vakil should engage a barrister as his senior. The resolution was passed, from all accounts, with the object of crippling the

predominating practice of barristers who obtained the lion's share ; and the result of that resolution has been that the barrister element, so far as Europeans are concerned, was considerably handicapped and for a time practically deserted Madras for Calcutta and other places ; and the Vakils have since had the bulk of the practice. Sankaran Nair refused to give his adhesion to the resolution aforesaid and dared to claim for himself the right to choose his seniors or juniors just as he pleased. Considering his comparatively junior position in the Vakil bar, his courage in standing by his convictions and acting in some degree against his prospects, demonstrated his honesty, at the expense of a cleavage with his fellow-Vakils which has only of late years been bridged over. Notwithstanding this breach in the continuity of his amicable relations with the Vakils, his eminence as an able lawyer and advocate earned for him the support of a large *clientèle*, and this was all the more extraordinary when he had men like Sir V. Bashyam Iyengar, Sir Subramania Iyer, Raja T. Rama Rao, and afterwards V. Krishnaswamy Aiyar, Sir P. S. Sivaswamy Aiyar and P. R. Sundaram Aiyar and others of like calibre as rivals. Two of those rivals became members of the Madras Executive Council—the late Mr. V. Krishnaswami Aiyar and his successor the Hon. Sir P. S. Sivaswamy Aiyar. Sankaran Nair's relations with the Bench were always extremely cordial, and the late Sir T. Muthuswamy Aiyar expressed the opinion that Mr. Sankaran Nair should be appointed as District Judge while Sir Charles Turner predicted that he would become a High Court Judge.

AS A JOURNALIST

While Mr. Sankaran Nair was in practice, he started the now defunct *Madras Review*, with which he was con-

nected for only a short time. He was also closely associated with the *Madras Law Journal*. Many of his contributions appeared in the Madras daily papers, to one of which he was for long a tower of strength. He has also been a contributor to the English Press, and his outspoken paper on the administration of justice in India in the *Contemporary Review* resulted in a strong Anglo-Indian agitation against the writer. When the article was published he had reverted to the bar after a short acting incumbency on the High Court Bench, and when the next vacancy occurred he was passed over in deference, apparently, to that agitation. Later on, he was restored to the High Court Bench, and now he has obtained a more distinguished position; so the Anglo-Indian agitation proved in the long run, *brutum fulmen*.

AS HIGH COURT JUDGE

Mr. Sankaran Nair acted three times as Puisne Judge of the High Court before he was permanently appointed to that position in 1908. Previously he had been Government Pleader on and off several times and conducted some important trials, chief among which was the trial of the persons concerned in the Shanar-Maravar riots of Tirunelveli, and in 1907, was appointed Advocate-General, Madras, being the first Vakil to hold permanently that important and dignified office. And Sankaran Nair, it may be mentioned, owed this directly to Lord Morley, then Secretary of State. He seemed to have felt the unjust treatment meted out to him by the local Governments, and he, therefore, directly made the offer to Mr. Sankaran Nair through the Governor of Madras, Sir Arthur Lawley. As permanent High Court Judge, he succeeded Sir Subramania Aiyar. Mr. Sankaran Nair was recognised to be a sound and strong Judge, and he easily maintained

his position with the ablest and strongest of his European colleagues. His independence and integrity were unquestioned. In the Tinnevelly Sedition Case, which occasioned much excitement in the Presidency, Mr. Justice Sankaran Nair pursued his own line and, undeterred by fear or favour or accusations of partiality, pronounced judgment according to his convictions, regardless of agreement or dissent from his colleagues.

It was said of him :

On the Bench, Sir Sankaran Nair acquired a name for independence, integrity, and impartiality, and was very popular with the profession. His evident desire to do justice, without allowing legal technicalities to cloud the plain issues in the case, has earned for him the appellation—Equity Judge. He always appreciated a learned argument from the bar, but the side with a strong case on the merits was sure to win before him. His was a commanding figure on the Bench, and his colleagues always resigned themselves into his hands and allowed him to have his own way. His vigilance on the Bench kept the bar alert. Seniors used to think twice before advancing an unsound argument, for, to be sure, he would discover them in no time, and juniors would sooner dare to hear the lion in its den than face him with an ill-prepared case. His judgments, which are many and valuable, are characterised by a thorough grasp of principle and wide legal research.

Sankaran Nair, J., was responsible for several judgments on land tenure; in the leading case of *Muthusami v. Masilamoni*, he held that there was no prohibition against marriage between the several castes of the Sudras. In his judgments on Marumakkathayam Law, he tried his best to introduce modern progressive ideas about family life and to smoothen the working of the harsh rules of *tarward* management. He was, however, not so anxious to display his scholarship in the judgments that he delivered as to do substantial justice. During a good part of his judicial career, he sat as a junior Judge along with Sir Ralph Benson, and many of the judgments delivered by that Bench bear the impress of his strong personality, although following

the practice then prevailing, the judgments were uniformly delivered as that of the Bench.

HIS PUBLIC LIFE : OFFICIAL

When Mr. Sankaran Nair was practising as a Vakil, he was made a member of the Committee appointed to enquire into the state of the Malabar Tenants. The relations between landlord and tenant in Malabar is a *vexata quæstio* with which the Government have always been loath to deal, and his work in that investigation was greatly appreciated by the authorities. Later on, he was appointed Secretary to the Devastanam Committee of which Sir T. Muthuswamy Aiyar was President, in which capacity also he earned the encomiums of the authorities. In 1889, he was nominated a Fellow of the Madras University, and although he was frequently invited to serve, and did serve for several years on the Syndicate, he declined the honor afterwards owing to more attractive work in other directions. It was in the Senate most certainly that he sowed, unconsciously, the seeds which have blossomed into the tree of Educational Membership, for there he showed himself to be a dispassionate critic of educational matters, with no *arrière pensee* or partiality with regard to any particular class or community.

In the following year he was nominated a non-official member of the Madras Legislative Council, and although at that time non-official members were allowed no scope to assert themselves, Mr. Sankaran Nair was always considered a sane and sober member, who indulged in no visionary Utopias, but a man who was prepared to do his utmost to help his countrymen to the best of his power and ability. While on the Council he helped forward two important legal enactments, one concerning village servants and municipalities in the Presidency, and

the second, a much more significant and far-reaching measure, that of the Malabar Marriage Act. He was one of the chief members of the Commission appointed for making recommendations on the subject, in which his knowledge of his native district, and its peculiar conditions, peculiarly fitted him to be an adviser. It may also be remembered that he was a member of a Provincial Legislative Council before and subsequent to Lord Cross's Act. Mr. Sankaran Nair also served on the first Education Commission after Lord Curzon's Commission visited Madras. "I had," said Sir Sankaran Nair, at a farewell function given in his honor, "to take the chief part, perhaps the whole responsibility of framing questions to be put to the witnesses, which no doubt directed the enquiry of the Commissioners". Sir Sankaran Nair was one of the witnesses examined before the first Public Services Commission of 1886; and in the last Public Services Commission enquiry held at Madras, his evidence was among the most outspoken of the many bold and honest statements made on that occasion.

PUBLIC LIFE: UNOFFICIAL

By un-official public life is meant those activities which are not in the remotest degree connected with Government, and which, unlike membership in a non-official committee for some official investigation, or the position of a non-official member in the Legislative Council, concerns only the social, political, and religious evolution of the Indian people under modern conditions.

Sir Sankaran Nair's incursion into the field of Indian and English journalism, and the part he played in publishing his convictions courageously has already been mentioned; but it is on the platform that some of his



SIR SANKARAN NAIR

important achievements were won. He was made President of the first Provincial Conference, held in the city of Madras in 1897, just when the political life of India had begun to get exciting. The plague measures had begun, making Bonibay and Poona furious.

CONGRESS PRESIDENTIAL ADDRESS

From the very inception of the Indian National Congress, Sir Sankaran Nair gave it his warmest adhesion and, himself a student of political conditions prior to 1886, he threw himself heart and soul into Congress activities. When the Congress attained the 13th anniversary of its birth, Sir Sankaran Nair was elected as the President of the Session at Amraoti. That was in 1897—a period immediately following the imprisonment of Tilak, and the deportation and internment of the Natu brothers—a period of intense political agitation and discontent. Nevertheless, Sir Sankaran Nair's Presidential Address was a frank and courageous review of the relations existing between rulers and ruled, of the obligations and responsibilities on both sides, and an optimistic survey of the possibilities—or more correctly—the certainties of India's future. In that address the speaker gave a concise *resume* of the duties of Government, and the hopes and aspirations of the Indian people. Referring to the Diamond Jubilee of Her Most Gracious Majesty Queen Victoria of blessed memory, he said :

While Englishmen in India inflamed by race animosity and the recollection of the Sepoy Mutiny, which ignorance still calls the Indian Mutiny, were calling for terrible reprisals, she, unasked, forgetting and forgiving, issued her gracious proclamation. It was a stern reproof to those who then clamoured for indiscriminate vengeance ; it continues to-day a standing rebuke to those of her European subjects who would deny us the rights of equal citizenship.

Repelling the charge that Indians were forgetful of the unsettled state of the country previous to the *Pax Britannica*, Sir Sankaran Nair said :

We are also aware that with the decline of British supremacy we shall have anarchy, war, and rapine. The Mahomedans will try to recover their lost supremacy. The Hindu races and chiefs will fight amongst themselves. The lower castes who have come under the vivifying influence of Western civilization, are scarcely likely to yield without a struggle to the dominion of the higher castes. And we have Russia and France waiting for their opportunities. The ignorant masses may possibly not recognize the gravity of the danger attendant on any decline of England's power in the East. But it is ridiculous to suggest that those who have received the benefit of English education are short-sighted enough not to see and weigh that danger. While, however, full of gratitude for what Great Britain has done to India--for its Government which secures us from foreign aggression and ensures security of person and property--it should not be forgotten for a moment that the real link that binds us indissolubly to England is the hope, the well-founded hope and belief, that with England's help we shall, and, under her guidance alone we can, attain national unity and national freedom.

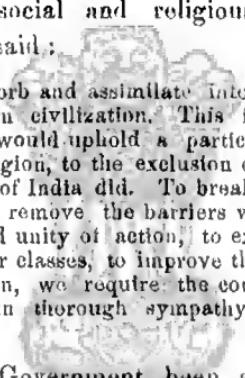
Sir Sankaran Nair, however, deplored the inevitable cleavage in India between Europeans and Indians. He attributed this state of things alike to English ignorance and exclusiveness. In the course of his Presidential Address to the Congress in 1897, he remarked :

An Englishman in India is in a strange world; with his energy, strong will, and ideas of freedom, he fails to understand and perhaps despises a nation given up to metaphysical dreams which does not regard material prosperity as the great object of life. In other parts of the world under European sway, in Africa and America, an alliance with a European is eagerly sought while in India, where also he is master, he is regarded by the castes as impure, whose touch is pollution. With such differences in thought and feeling, no wonder that ordinary Englishmen ignore the people entirely and do not try to understand them. Hence their limited comprehension. Not knowing the native mind, they exaggerate the importance of trifles which only ruffle the surface of native feeling and attribute to certain events a significance which, however justifiable in England, do not even deserve a passing notice in India.

His optimistic outlook on the question of Self-Government for India was pithily put in the following words :

I myself feel that there is very little reason to fear that England will reverse the past. To deny us the freedom of the Press, to deny us representative institutions, she will have to ignore those very principles for which the noblest names in her history have toiled and bled. But we know that real freedom is possible only under the Government of the English Nation nurtured in liberty, hating every form of tyranny, and willing to extend the blessings of representative Government to those capable of using it wisely in the interests of freedom and progress.

SOCIAL AND RELIGIOUS REFORM

As regards social and religious amelioration and reconstruction, he said : 

We desire to absorb and assimilate into our own what appears good to us in Western civilization. This is impossible under a Government which would uphold a particular social system or a particular form of religion, to the exclusion of others as some of the ancient Governments of India did. To break down the isolation of the Hindu religion, to remove the barriers which now prevent free social intercourse and unity of action, to extend the blessings of education to the lower classes, to improve the position of women to one of equality to men, we require the continuance of a strictly secular Government in thorough sympathy with liberal thought and progress.

Nor has the Government been altogether indifferent in matters of social legislation. Sir Sankaran Nair gave an array of precedents for Government interference in the cause of Social Reform. Writing in the columns of the *Contemporary Review* in 1911, on "Indian Law and English Legislation", he pointed out how often, and how successfully, the State has intervened in the interest of the people's social amelioration :

The tragedy enacted on Mount Calvary two thousand years ago is a standing monument to the unwisdom of leaving to a subject race, governed by the theocratic ideals, the administration of the criminal law. For a long time, however, the East India Company allowed for a variety of considerations crimes of an even more atrocious character to be perpetrated. But it was impossible for them with their ideals to tolerate for any length of time practices

which they were at first compelled to permit as bearing the sanction of Hindu religion. Gradually they began to interfere. They made the criminal law applicable to all castes, and the immunity of Brahmins from legal punishment was no longer recognised; the last relic of such privileges, the exemption of the Benares Brahmins from the death penalty, was abolished in 1817. The practice of drowning children in the Ganges in fulfilment of vows to Mother Ganga, the inhuman parents often pushing their children with their own hands into the river, was rendered a criminal act. Similarly, the practice of exposing children in the Sunderbans or Saugor Islands was rendered punishable by the Government in the early part of the last century. It was the practice of Brahmin creditors to enforce payment of real or fictitious debts by *dharna*. This has been made a crime. The putting down of infanticide which often took place in the darkness and privacy of the Zenana through means practically impossible of detection, required more than half a century of stern vigilance and incessant pressure on the part of British Officers, who had to face the undisguised hostility of native opinion. Burning a widow alive on the death of her husband was declared a crime about 1830, despite the indignant protest of orthodoxy, and slavery was abolished in 1843. Coming down to times within the memory of men now living, the Penal Code in 1860 declared the intercourse of a man with his wife under ten years of age to be rape, although the Hindu law was silent on the point; the dedication of girls under sixteen to a life of prostitution under the pretext of religious sanction, was constituted an offence. In 1891, the age of consent by a wife to intercourse with her husband was raised from ten to twelve years. Where the injustice was patent, the British administrators interfered, even outside the domain of criminal law. The Hindu law which deprived a convert of his property and many of his civil rights, was abrogated in 1850. Widows were allowed to marry in 1856. The religious law which compelled a person to pay the debt of his father and grandfather under the penalty of the deceased being excluded from heaven, was not generally enforced, and in one presidency where the Courts enforced it, the Legislature in 1866 repealed the law by legislation. These achievements alone, in the face of strong opposition would, apart from all other reforms, constitute a record of which any Government might be proud; but more glorious still is that awakening of India's intellect and moral consciousness to the inhumanity of the system which justified such acts in the name of religion.

SOCIAL REFORM AND GOVERNMENT LEGISLATION

And then at the Social Conference in 1908, he pointed out the direction in which legislation in India was necessary. We have seen how the State was responsible for previous legislation. Sir Sankaran Nair urged further

progress. He believed that Social Reform in India would only be possible "under a strictly secular Government in thorough sympathy with liberal thought and progress". He explained his views of further reform in the following words :

It was easily settled that neither the Hindu nor the Mahomedan laws should be allowed to interfere with the criminal law of the country as might be declared by the Government; if the Hindu law was against it, Hindu law must go. Thus any consummation of marriage, when the female is below a certain age, will be punished though the Hindu religion enjoins it as a sacred precept. Similarly, collection of debt by *dharna* is punishable. Many other examples might be easily given. Now the entire body of Hindu Criminal Law is based on caste and sex privileges, and the disregard of it is as violent an interference with Hindu religion as can be imagined. How salutary it has proved to be can be imagined when legal journals, conducted by High Court Vakils, can still be found to advocate the recognition of caste privilege in the administration of criminal law. So also with regard to several other great branches of law, like contracts, the Hindu law has been abolished. This is on the ground that uniformity is essential on such questions, and public policy requires the enforcement of certain general principles.

On the other hand, so far as the laws of inheritance and marriage are concerned, the Hindus are left to be governed by their own laws, where these laws are not opposed to public policy. This is not on the ground that persons or classes may be left to make inheritance and marriage laws for themselves. No doubt, it is for the State to enact them quite as much as the criminal law of the land. Those laws therefore ought to conform to rules of public policy. But expediency and the necessities of the situation have forced the Government to administer to the Hindus their own laws of inheritance and marriage. Many of these laws were unreasonable, or such as a non-Hindu Government should not accept, but they were tolerated. I shall briefly explain this: The Hindu law is divided broadly into two schools—the Mitakshara and the Dayabhaga. To Mitakshara excludes a near blood relation. The Dayabhaga excludes certain relations on account of spiritual disqualifications. The British Government may be justified in administering this law to those who are willing to be governed by it, but they are not warranted in stamping it with their approval unless they are prepared to accept the principles on which the system is based. Similarly, Hindu law recognises class restrictions for marriages. The Government, while administering them, should not approve of them as laws required in the public interest. Those laws, therefore, have not received the sanction of

legislation nor are they stereotyped by legislation, with the result that any branch of this customary law may be abandoned by desuetude or adoption of another branch of Hindu law. Though the Government have been often requested to codify the Hindu law, the request has been steadily refused, and this is one of the main reasons.

THE RIGHTS OF INDIANS

Speaking of the poverty of India, Indian finance, the equality of Indians, Eurasians and Europeans, with regard to the right of bearing arms and the training of Indians for a military career and the open door to the ranks of the Civil and Provincial Services, Sir Sankaran Nair covered the whole question of the right of Indians to British citizenship in telling and unmistakable language :

The racial feeling I refer to, is confirmed by the belief generally entertained in India that it is almost impossible to secure the conviction of a European accused of any heinous offence. If that belief is justified by the action of our authorities, then the position is deplorable. If the impression is unwarranted, then its origin must be due to the idea of inequality before law generally entertained. On this race question, no concession is possible. No compromise can be accepted so far as it lies in us. We must insist on perfect equality. Inequality means race inferiority, national abasement. Acquisition, therefore, of all civil rights conferred on Englishmen, removal of all disabilities on Indians as such—these must be our aim.

THE NATU BROTHERS

It is unnecessary to recite other passages of the Amraoti speech, but the following criticism on the deportation of the Natu Brothers deserves to be remembered :

The arrest of the Natu brothers was and must remain a great blunder. It recalls the worst days of irresponsible despotism. Liberty of person and property is a farce if you are liable to be arrested, imprisoned, and your property sequestered at the will and pleasure of Government without being brought to trial.

Referring to the need for safeguarding popular rights and liberties, Sir Sankaran Nair said :

We trust the Government will bear in mind that in the circumstances of this country, anything which checks freedom of public discussion is most deplorable. Such check may become a temporary, if dangerous, bar to quiet and steady progress. The stream of our national progress will nevertheless move on. It will become dry only when our holy rivers of India become dry. Its progress at present under sympathetic guidance is smooth. Its unwise obstruction may compel underground passages or its overflow.

THE DESTINY OF INDIA

Lastly, his peroration dealt with India's political future, his own faith in the beneficence of the British *raj* and the ultimate destiny of his countrymen :

Gentlemen, we have no need to despair of our political future so long as we depend upon Great Britain, but let us at the same time be alive to our duties and responsibilities. India expects great things from us, the whole civilised world is watching the changes coming over us. Shall we be content to leave India as it is, or shall we go on and do all in our power to lift it to a higher level. Years of subjection, nay, we may even say servitude, have sapped the strength of the Indian nation, dwarfed its growth, and stripped it of all that was grand and noble in it, and if India is ever to occupy a better position than she fills at the present moment and take her proper place in the scale of nations, it must be entirely due to the zealous efforts of our educated and enlightened sons. Let *nil desperandum* be our motto; let not "insidious smile or angry frown" deter us from following the straight path of duty; and with the welfare and progress of our land as our end and aim, let us endeavour under a solemn sense of responsibility as well as loyalty to our country to bring about that glorious future which must inevitably crown our efforts.

CONVOCATION ADDRESSES

Sir Sankaran Nair also presided over the National Social Conference in 1908. In that year he was invited by His Excellency, the Chancellor of the Madras University, at that time Sir Arthur Lawley, to deliver the Convocation Address. Convocation addresses can scarcely ever claim the distinction of complete originality, and Sir Sankaran Nair's was no exception to that rule; but, nevertheless,

it was a manly, straightforward speech, suggestive and discriminating, revealing the deficiency of Indians, recognising and fully acknowledging the benefits conferred by England, and an address which, by its clarity of utterance and statement of the true condition of things educational, political, religious, social and industrial, is well worth perusal. It showed Sir Sankaran Nair's firm grasp of the educational needs of India. Referring to the responsibilities of Indian officials, he said :

Remember also that in the present state of the country the native officials can do incalculable good. They have the means of influencing the rulers of the land to an extent which others have not. The daily routine of administration is practically entrusted to them, and laws, however beneficial, may be rendered odious by the manner in which they are administered and become a source of disaffection.

"Every country will get," Sir Sankaran Nair observed on that occasion—"it is scarcely possible to conceive of any exceptions—the Government it deserves." And then he went on to say :

Our countrymen may occupy the highest posts in the country, not excepting that of Viceroy ; we may have elected councils, with full parliamentary powers of taxation and legislation and control over the executive. We shall then have all the external forms of free institutions, but if our people have not the character, the moral and social condition necessary to sustain free institutions, they will only be invested with the show and not possess the reality of freedom. I am speaking to all : Christians, Hindus and Muhammadans, and if there are amongst you followers of other creeds, or of no creed, to them also. The most acute minds of India were intent on things not of this world, and the world itself they regarded as an illusion. In such an environment the virtues of social and political life faded into insignificance and when in due time the foreigners came into this country, they found India in a state of stagnation, with a certain amount of well-being but not in a state of healthy activity or progress. It was a state of society in which no cohesion was aimed at and no co-operation was required. India then became a political kingdom under foreign rulers, and will continue to be one so long as its heterogeneous elements are held together by the British Government. To imagine that any change in the political status, wrought as a mere concession from her rulers, will transform her into a homogeneous whole, is the fashion of certain politicians, but such

a conception can only be classed among the chimeras of subject races. My earnest advice to you is, to try to make India a national kingdom whose subjects are held together by unity in interest, character, and social intercourse. Christians are not united even among themselves, Muhammadans with their class divisions, Hindus split into innumerable microscopic sects, all classes standing aloof from one another, many classes priding themselves in their isolation on their class morality, their own standards of well-being, their own ideals of civilization, rightly or wrongly impressed with the belief that they have no community of interests with others—such is the sorry spectacle presented by the India of to-day, the candidate for admission to the Concert of Nations.

In the course of the Convocation Address delivered by him at the Indian Women's University in 1927, he noted with satisfaction the departure made by that University by adopting an Indian language as the medium of instruction, and said :

In one sense, the language is no doubt only a vehicle of thought. But there is little doubt, it also tends to fashion your minds and in some ways regulate and form your thoughts. Your education, therefore, for its results to be permanent and effective should be imparted in your own language. In addition there is also another reason. You have got a sacred literature of your own; this literature will form part of yourself if your education itself is in that language.

He was an ardent advocate of the woman's progress. In the course of the address, he referred to the generally held opinion that the only true womanly sphere of work is the governance of the home and said :

While I agree that your education should not only not unfit you but make you better fitted to perform all the work which has been regarded as peculiarly your own, I do not think that in future you should be confined to those spheres of life. You are not to be an appendage to your husband or anybody else. Your education should not be intended to make you a helpmate of your husband any more than your husband's education should be intended to make him your helpmate. Let those that think that you should be confined to your work in your homes look round.

As a social reformer, Sir Sankaran Nair holds that "an ounce of practice and example is worth tons of theory and exhortation", and in his own life he has been a living exemplar of that opinion. There is no need to

dwell on the many speeches in which he has advocated the necessity for, and urgency of, thorough-going social reformation in the life of the Indian people. Rigid caste-observances and puerile social differences are, to Sir Sankaran Nair, as " sounding brass and tinkling cymbals", and the essential fact that one man is as good as another socially, intellectual and moral considerations being equal, is one of his strongest convictions.

AS MINISTER FOR EDUCATION IN VICEROY'S COUNCIL

In October 1915, Sir Sankaran Nair was appointed to succeed the Hon. Sir Harcourt Butler as Member for Education in the Viceroy's Executive Council. Though on principle this appointment of High Court Judges to executive offices was deemed undesirable, still the elevation of Sir Sankaran Nair was welcomed as a fitting reward for his undoubted ability. High expectations were formed of the appointment. The Madras Presidency Muslim League and the Muhammadan Educational Association of Southern India, for instance, gave a dinner party at which there was a very distinguished gathering, representative of all sects and communities in this city. Mr. Justice Abdur Rahim, in proposing the toast of the guest of the evening, spoke of some important problems which Sir Sankaran would have to deal with as a member of the Government of India. The question of India's status in the Empire, the public service of the country, and, finally, education were, according to Mr. Justice Abdur Rahim, some of the big questions that Sir Sankaran Nair had to consider. Speaking of the Educational Department which Sir Sankaran Nair would be in charge of, Mr. Justice Abdur Rahim said :

His views on educational matters are very naturally considered very progressive, and very liberal, and I venture to assert that there have been few, and there will be few, Education Members who will have had at their command such a stock of experience as Sir

Sankaran Nair will have. He realises, I believe nobody realises more, that education, more education, popular, technical, higher industrial, these are the desiderata of the country, and that vast energies and vast sums of money are wanted before the needs of India in this respect can be satisfied. I feel confident that when his term of office is over, he will have laid down practical measures which will place higher University education on a large, broader and more extensive basis.

In responding to the toast, Sir Sankaran Nair said that " Indian progress depended upon the co-operation of all the races that live in this country, that without active Muhammadan co-operation and effort, Indian progress, political progress in particular, was impossible".

THE CIRCULAR ON EDUCATION OF WOMEN

One of the first results of Sir Sankaran Nair's appointment was the Government of India Circular to the Provincial Governments regarding the education of women. Sir Sankaran Nair's commendable enthusiasm for female education resulted in the following enquiry:

The Government of India are, therefore, anxious to resume the consideration of the general question of female education and would be glad of the assistance of local Governments, to enable them to take stock of the present position in the matter and to focus the opinions of competent persons on the main questions at issue.

They would be glad, in the first instance, if local Governments would submit a brief report to show what has been done for the improvement of female education since the 1st April 1913, the date from which the schemes prepared in compliance with the Government of India's Circular of the 9th May 1913, took their start. The Secretary of State, in his reply to the Deputation of October 1915, has pointed out that comparatively little can be learnt from the statistics at this moment, and in any case statistics on the subject are already at the disposal of the Government of India, but the Government of India are desirous that the statistical information available should be supplemented by brief reports showing what definite steps of importance have been inaugurated in each province since the 1st April 1913, in respect of (1) the increase of facilities for female education: changes in character of such education given, and the financing and control of such education in primary institutions; (2) the same points with regard to higher institutions; (3) the training of teachers; and (4) the inspection of schools.

In fact, Sir Sankaran Nair has had decided views on the subject of female education, and it is no wonder that we had the Government of India Circular on the Education of Women so soon after his appointment to the Viceregal Council.

For some time past various movements have sprung up both in England and India regarding the subject of Women's Education, and under the fostering direction of the late Sir William Wedderburn and Mrs. Fawcett, a Deputation waited on the Right Hon. Austin Chamberlain, the then Secretary of State for India, on the 12th October 1915. It was generally believed that the circular letter of the 22nd of February 1916, on the Education of Women in India, was an indication of the enlightened and sympathetic interest of the Government of India towards female education.

EXPENDITURE ON EDUCATION

Though Sir Sankaran Nair could not have a free hand in adopting the late Mr. Gokhale's scheme of free and compulsory education, it was in his power to contribute somewhat to the promotion of primary education. Accordingly in introducing the Education and Sanitation heads of the Financial Statement for the year 1918-19, Sir Sankaran Nair said with reference to the slow but distinct advance of education :

When I took over my present office in 1915, we were spending about $4\frac{1}{2}$ crores of rupees a year. Last year we spent 5 crores, and next year we hope to spend over 6 crores. The number of scholars which seven years ago was barely $6\frac{1}{4}$ million, was over 7 millions in 1916-17, and I trust that it will be found to exceed 8 millions in the present year, and that we shall make a further advance next year. This is not as great a progress as we might wish to see, but none the less it is a very distinct advance and one which we cannot ignore.

It is generally recognised that of the various pressing needs of education in this country, that of primary education is the most pressing, and we should have been glad to have been able to present to this Council some scheme which will provide in advance for the progressive extension of primary education in India, but as His Excellency has explained in his speech at the opening of this session, the changes in our financial system which will be inaugurated as part of the contemplated reforms, render it impossible for us at this stage to formulate any programme of this kind in advance. In the meantime, we have, as the Council are aware, given an opening to the introduction in several provinces of schemes by which local bodies can enforce in their areas a system of compulsory education, and the provincial budget shows for the first time a provision for meeting the expense of introduction of compulsory education. . . . We have not ourselves adopted compulsion as part of our present programme, but we are anxious to see primary education increase by whatever means this increase may be obtained, and on these grounds we have included in our budget the new recurring grant of Rs. 30 lakhs for primary education.

Though the Imperial Government are loth to subscribe to the principle, and putting into practice the compulsory primary education themselves, it augurs well for the future of education in India, that through the Provincial Governments local bodies are asked to enforce a system of primary education, and that provision also has been made in the Provincial Budget for meeting the expense of introduction of such a system.

CONFERENCE OF MEDICAL EXPERTS

On May 23, 1919, Sir Sankaran Nair presided over the Conference of Medical Experts at Simla. In opening the Conference, he said :

It is a matter of pride to us that India has made substantial contributions to medical knowledge, the Indian Medical Service has done splendid work and the names of some of our investigators have become household words. I hope to see this branch of medical activity go on increasing in scope and efficiency, and that India will continue to earn the gratitude of the world for the discoveries which her medical services make in the causes and cure of disease, but I also want to see India herself benefit more freely from the application of the knowledge which she has produced, and when I say this I am sure you will all agree with me we can claim to have certain discoveries in regard to malaria, and yet malaria carries

off its hundreds of thousands in our midst every year. We can claim the theory of plague infection, and yet for 22 years this scourge has infested our country. We are carrying valuable research on the subjects of hookworm, leprosy, and other diseases. Yet our labour force is disabled by hookworm, and the leper too often found among our villages. Our rural tracts are insanitary. Our cities are frequently models of unsatisfactory housing. These are matters which, for long, have been occupying my mind.

Discussing the financial aspect of Medical Research and the extent to which Government were prepared to help this great enterprise, he said :

We have this year secured a sum of five lakhs as the nucleus of a Public Health Fund. This is separate from the sum which we annually disburse for medical research. It is to be used in the application of medical science in a practical and work-a-day form among the people. You have been called together as a body of experts to advise the Government as to the best means of doing this.

The Conference passed a number of resolutions, and among the more important proposals they recommended were : the establishment of a central public health board, consisting of official and non-official members, with a view to the co-ordination of preventive and curative medicine and of research and the creation of similar boards in the provinces. There should also be a mobile corps of epidemiological workers who would be maintained from the allotment. These workers would ordinarily be at the disposal of the local Government, but would be liable to be concentrated on the orders of the Government of India in any area afflicted by a severe epidemic. Their functions would be the investigation of any particular epidemic, assistance in coping with it, and education of the people in the avoidance of the disease. The Conference also laid stress on certain kindred measures, such as the establishment of an epidemiological statistical bureau and further development of research facilities by the establishment of a well-equipped central institute.

CONSTITUTIONAL REFORMS

As ex-President of the Congress and a Congressman, Sir Sankaran Nair has done his bit to promote the cause of constitutional reforms for India. Long before the publication of the now famous Memorandum of the Nineteen, he had been urging, on various occasions, the need for one or more of the proposals adumbrated in the scheme. Since the announcement of August 1917, he worked with characteristic zeal for the realisation of the goal set forth in that historic document. His unremitting exertions to bring the Government of India's views on line with the ideal of responsible government, and his efforts to make the best of by no means an easy situation in pressing his colleagues to accept the Montagu-Chelmsford reforms, are well known.

People who have known Sir Sankaran Nair for long, who have valued him for his independence and patriotism, were wondering how he could be a party to the actions of a Government that sanctioned many an unjust and arbitrary proceeding of the Provincial satraps. They could not understand how he could acquiesce in deportations and internments and such like acts of unwarranted assumptions of executive authority. At the top of it all came the Rowlatt legislation against which the whole country stood solid and almost undivided. Still Sir Sankaran Nair's silence was inexplicable and puzzling. And then the finishing touch to this extraordinary scene was given by the Martial Law Ordinances in the Punjab. The whisper grew audible, and here and there men wondered at the mute Congressman in the Council Chamber. But Sir Sankaran Nair was conscious of the futility of mere resignations and his heart was fixed firm on the fate of the reforms.

He would not do anything to jeopardise the prospects of constitutional reforms for India, and he shrank at the thought lest the labours of a whole generation should go to waste. He continued to work at his office amidst very embarrassing circumstances. In May 1919 were published the recommendations of the Southborough Committee's Reports on Franchise and Division of Functions which he welcomed as a fair beginning in responsible Government. Some of the Provincial Governments, however, inspired by the all powerful I.C.S., were resolutely opposed to the idea of divided privileges. They stood as of old for monopoly, and the Government of India itself took up the harp in its turn and misnamed its despatches as reforms. It would not part with any power, and its recommendations were at once disappointing and reactionary. Sir Sankaran Nair's position under these circumstances was one of keen anxiety. He, however, as might be expected from one of his character and antecedents, wrote a remarkable minute of dissent setting forth his objections to the views of the Government of India in strong and unambiguous terms. It is a document of surpassing interest, and it is but fitting that we should give some excerpts from it.

THE REFORMS AND THE I. C. S.

Sir Sankaran Nair is firmly of opinion that the success of the Reform Scheme should in no case be left to the tender mercies of the Civil Service. He says:

The Reform Scheme is intended to release the duly elected representatives of the people, in part at any rate, from the control of the Civil Service. The Indian opinion is unanimous that this step is necessary in the interests of good administration and is due to the failure of the Civil Service to carry out the intentions of the Parliament and of the people of England. The Governor in some provinces is likely to be a civilian for some time to come. In others he will be greatly under civilian influence. In these circumstances

the provision to retransfer is, and will be, received as a warning to the Legislative Council not to indulge in a course of action which will lead the Civil Service to take that step. In fact, my colleagues practically say so in clear terms. The Civil Service have also openly declared their hostility to any real reform. It is absurd in these circumstances to place the future of Indian constitutional reform in their hands. The reforms are a gift of Parliament, not of the Civil Service. The Parliament may take it away at any future time if they choose. The future Legislative Councils have to perform their duty to the people of India and to Parliament. But to place this weapon in the hands of the Civil Service is in all probability to ensure failure of Reform. They should not be allowed in future, as they have done in the past, to nullify the policy of the people of England.

LAND REVENUE AS A TRANSFERRED SUBJECT

Regarding the question of land revenue, the Committee recommend that taxation on land and duties upon unearned increment on land should be treated as a Provincial subject and also a transferred subject. The Government of India agree that such taxation should be imposed by Provincial Governments without its own sanction but they would make it a reserved subject. Sir Sankaran Nair protests against the principle of the proposal and says :

The land revenue or land rent should be treated as revenue pure and simple to be imposed only by the Legislative Council. At present outside the permanently settled Zemindaries, the theory maintained by the Executive Government is, that land is the private property of the Crown, the landholder being bound to pay any assessment that may be fixed by the Executive Government at their discretion. India is the only country in the world where neither law nor custom nor competition determines the revenue or rent. This has been responsible to a great extent for the increasing poverty of the country. It has certainly tended to keep away labour and capital from land. It appears to me to be therefore essential that the proposal of the Functions Committee that the entry "Duties upon the unearned increment on land should be so framed as to make the provincial power of land taxation as wide as possible" should be accepted so as to cover the case of land revenue assessment referred to in paragraph 79. This may be done by altering the entry into "all demands upon land" and by making the imposition of any revenue on land either by legislation or by periodical settlements a transferred subject.

INDIAN INDUSTRIES

He holds equally strong views on the industrial condition of India, and he pleads with the Committee that it should, above all, be on the list of transferred subjects.

India we know was a great manufacturing country whose wealth attracted the East India Company. Before the Mutiny, her industries were, by deliberate policy of active discouragement in India, and by prohibitive duties in England, destroyed. She was thus reduced from an agricultural and a manufacturing to an agricultural country. The general policy of the subordination of Indian to English commercial interests has since continued to the present day. India has been utilized for the exploitation of her natural resources for the investment of English capital and for the dumping of English goods. Instead, therefore, of the Indian industries relieving the pressure on land, their ruia has thrown millions of workmen out of employ to compete with the agriculturists. This attitude of the Government has materially contributed to the unrest and disaffection in the land. It is therefore essential that we should adopt a course which would place us beyond suspicion.

Lastly, it is said that there is a racial question involved, that considerable influence would be exercised on Ministers to refuse any form of aid or countenance to British enterprise and to favour Indian undertakings. So far as Indians are concerned, this charge is absolutely unfounded. Objection to the English capital enterprise is raised only when that stands in the way of Indian enterprise and Indian prosperity. And to remove any such misapprehension it is difficult to provide safeguards similar to those proposed by my colleagues in other cases. But I assert without hesitation from experience that so far as the Government are concerned, the fear that they will unduly favour foreign enterprises to the prejudice of Indian enterprises is well founded. It is true enough that the Industrial Commission makes recommendations themselves unsatisfactory, which in some respects may assist the Indians but here again we know from experience how little we can rely on such recommendations when they have to be carried out in practice.

GOVERNMENT'S EDUCATIONAL POLICY

Sir Sankaran Nair's criticism of the educational policy of the Government is of more than common interest, coming as it does from one who has held the responsible office of a Member for Education. He urges that education in all its stages should be under Indian control.

I have been the head of the Department of Education now for more than three years, and I am satisfied that future educational progress depends upon Indian direction. My predecessor in this office, Sir Harcourt Butler, also would make it a transferred subject. The only other member of Indian Government who has been an Education Member since the creation of the Department, Sir Claud Hill, who is unfortunately not here to sign the Despatch, has recorded his opinion in favour of transfer. The Government of Bombay, the Punjab and the United Provinces would transfer education as a whole. The Madras Government would not transfer any branch of education. Bengal and Assam would not transfer collegiate education, but my colleagues, like myself, are of opinion that this cannot be done if secondary education is transferred. Bihar and Orissa alone is opposed to the transfer of secondary, technical and collegiate education. My colleagues would transfer primary education, while the reasons given in their report, if they are correct, tend inevitably to the conclusion that it is primary education that should be kept in the hands of the Government and that higher education may safely be transferred. Those who would keep education a reserved subject, do so, I fear, not in the interests of educational progress but for political reasons. They have themselves no scheme of education in view and their predecessors have been going on making experiment after experiment, all in the face of Indian protest, which they themselves have now to acknowledge had ended in failure.

INDEPENDENCE OF THE UNIVERSITIES

And he agrees with the Sadler Commission's remark that there is too much Government intervention in University matters:

मुक्त विद्यालय

They are perfectly right, and it is impossible under such a system that any university can carry on its work efficiently. It is just for that reason that Indians are anxious to get rid of the bureaucratic control and place the university and secondary education under the control of a Minister. It is not difficult to come to the conclusion that the same state of things will otherwise continue. I am, therefore, of opinion that the Committee's recommendations should be accepted, and Education as a whole should be transferred.

THE NON-BRAHMIN MOVEMENT

Sir Sankaran Nair anticipated that the Reform Scheme would strengthen the non-Brahmins. Touching the non-Brahmin controversy, he said :

In the early years of the Congress, the non-Brahmin leaders were invited by the officials to stand aloof from it, and if possible, to denounce it as inimical to their interests. They resolved to disregard the advice. Their main reasons were these: They found that by the British conquest it was the Mahomedans and the non-Brahmin higher castes who had suffered most. The Rajahs and the Zemindars who were deprived of their properties by the British Government generally belonged to those classes. By far the majority of them were either deprived of their properties or allowed to retain whole or portion of them on conditions which were very onerous. The revenue payable was very heavy with reference to the properties which they held at the time of British conquest. Their rights were being encroached upon. The ryotwari system before 1857 was iniquitous and destructive of private property. Subsequently though not quite so bad, it was felt to be oppressive. The merchants, the artisan classes, and the labouring classes were involved in the misfortune of these superior classes. I have already pointed out that the *raison d'être* of the Congress was the intense poverty of the people and the measures which they put forward to relieve such poverty concerned the non-Brahmins more than Brahmins; the non-Brahmin higher castes, therefore, stood to gain from its success more than any others. The other questions which the Congress took up, like the separation of judicial and executive functions, also concerned them more. Under the conditions that then existed and to a great extent, even now exist, the Brahmins had far greater chances of success in the services and elsewhere. They had the qualities which were required by a foreign ruling race who wanted good subordinates. The Mahomedan and the Hindu Zemindar and the Hindu martial classes were looked upon with suspicion on account of such of their qualities which are only required for administration and government; and not required in those whose main function was to obey and produce wealth which should be at the disposal of their masters. The non-Brahmin leaders therefore felt that they had a better chance of success in the new condition of things which, they hoped, would be brought about by the Congress agitation when the qualities which they, in their own opinion, possessed in a higher degree than the Brahmins, would have a better scope. They found also that though the old class of Brahmins had faults which are now imputed to them by the leaders of the non-Brahmin movement, a distinct improvement was visible in the younger generation that was growing up, and they hoped that common efforts, common aspirations, and the common good of the country will introduce a change in the Brahmin class. These hopes have not been disappointed. It is true that there are still Brahmin leaders under the domination of feelings and sentiments which are not conducive to harmony or progress but, on the other hand, there is no doubt that, generally speaking, the Congress movement has brought about a greater rapprochement between the various classes.

Mrs. Besant, in particular, has brought over the whole of her Brahmin party to discard the Brahmin restrictions, which stood in the way of the hearty co-operation with the non-Brahmins.

THE DEPRESSED CLASSES IN THE MONT-FORD SCHEME

Sir Sankaran Nair was less optimistic about the depressed classes, but he has no doubt that there is absolutely no chance of their being worse off under the Reform Scheme but very much the reverse.

In the case of the depressed classes the conditions are different. It is absurd to say that their position, so far as their material prospects are concerned, has improved under the British Government. It has steadily gone from bad to worse.

* * * *

In any event, I am fully satisfied that this class cannot possibly be worse off under the proposed reforms, while it is probable that their position can be improved, and it is certain that, if properly safeguarded, it will be improved.

MINUTES OF DISSENT

Even before the publication of the Southborough Committee's Reports, the Government of India had submitted their own scheme of so-called reforms in their despatch. This despatch was altogether disappointing and reactionary in its recommendations, and it was surprising how the same persons who had given their consent to the Montagu-Chelmsford proposals could sign a document which might be called the very negation of any pretence to responsible Government. Sir Sankaran Nair again rose to the occasion. And the minute of dissent he wrote on this despatch was no less striking than his criticism of the Government despatch on the Southborough Reports from which we have quoted at some length. It is a document which is argumentative from beginning to end. Suffice it to say that it forms a most important, constructive criticism of the original scheme and an authoritative refutation of the Government's counter

proposals. Sir Sankaran Nair discusses every item of the Government's contentions and explodes their assumptions of infallibility.

What in my opinion "responsibility" implies is the subordination of the executive to the legislative council composed of the representatives of the people. For this purpose, it makes no difference whether they are governments nominated by the legislative council or not. The essential point is that they must carry out the will of the legislature in every respect.

The proposals made by my colleagues tend to the diminution of Parliamentary control, not for the purpose of transference of such power to the legislative councils of the country, but to the executive governments in India. What the Indians desire is, not that Parliament should surrender in favour of the executive governments its power of control, but that it should delegate to popular assemblies in India when it should think it proper to do.

Then followed elaborate criticisms of every aspect of the Government's counter proposals. After criticising their recommendations regarding the Provincial Assemblies and the Reserved and Transferred subjects, the Grand Committees and the Budget and, above all, the extraordinary powers vested in the Government of India (which yet remains as autocratic as ever), Sir Sankaran Nair concluded that half the members of the Executive Councils, both Provincial and Imperial, should be Indians :

The Congress and the Moslem League as well as the Sikhs and the non-Brahmin classes of Madras want it. The reasons are obvious. Everybody feels that without the infusion of an adequate Indian element into the Executive Councils, the reforms that are essential for the better government of the country will not be carried out. Again, there are various questions, particularly those affecting finance that are settled by the Government of India and by the Secretary of State in consultation with one another which require a strong Indian element in the Executive Council. In all those questions without adequate Indian influence, the Government of India will easily yield to the Secretary of State. Various influences will act upon the Government of India which require adequate Indian influence to counteract them. Indian influence is also required to prevent the Executive Government of India from being unduly autocratic or unsympathetic towards popular movements. I would, therefore, propose the addition of one more Indian member to the two members proposed

by the Government of India. If this is not accepted, I would suggest the appointment of an Indian Minister to exercise the Government of India control over the transferred departments in the provinces. He may be called in for consultation but not for decision.

THE RESIGNATION

It is, therefore, not surprising that holding such pronounced views, Sir Sankaran Nair should have found his position so embarrassing as to make him anxious to resign from a Government in which he has had to work with colleagues who did not share his views and who were so fundamentally opposed to his deep-rooted and long-cherished convictions. To add to the difficulties of the situation already irksome, the Martial Law sentences cast a gloom over the whole country; and when the sufferers were refused even the privilege of choosing their own Counsel, Sir Sankaran Nair could stay in office no more. And it is no secret that Sir Sankaran Nair made the Viceroy's refusal to revoke Martial Law and permit Counsel for the accused to enter the Punjab the definite cause of his resignation. The long rumoured resignation was officially announced on 23rd July 1919.

Sir Sankaran Nair was naturally the recipient of numerous congratulatory addresses on his resignation as a mark of appreciation of his patriotic services in connection with the Reform Scheme. He contributed largely and effectively to place the views of the better mind of India before the authorities. On July 31st, Sir Sankaran Nair left for England to co-operate with the Indian deputations already in London, in promoting the cause of the Reforms. Prior to his departure from Bombay, he was entertained by various public bodies like the Depressed Classes Mission, the Western India Liberal Federation, and the Servants of India Society. At the Servants of India Home,

Dr. Sapru eulogised the services rendered to the country by Sir Sankaran Nair by his minute on the Reforms, and said that : "Though he was a supporter of the Montagu-Chelmsford Reforms, he always had assessed it at its proper value." Before embarking, Sir Sankaran Nair gave the following message to the Indian Press and to the leaders : " You must urge the people of the country to concentrate upon the Reforms Bill and press for its widening."

THE LIBEL ACTION

Sir Sankaran Nair's return to popularity was however short-lived. He was a man of surprises, giving as he did full and blunt expression to his strong and individual opinions. His book "Gandhi and Anarchy" created a sensation both in England and in India. There were many passages in it which were largely controversial, and Sir Sankaran had to face a libel suit filed against him by Sir Michael O'Dwyer. With characteristic boldness of spirit, he decided to justify his conduct in his defence. The case was tried by Mr. Justice McCardie and a British jury, and after a protracted trial judgment was entered for the plaintiff, £500 being awarded by way of damages and about £20,000 by way of costs.

IN THE COUNCIL OF STATE

Since his return to India, Sir Sankaran was an active member of the Council of State and, in 1927, he moved, though unsuccessfully, the resolution in favour of the establishment of a Supreme Court for India; whether as a member of the Government or as an elected representative of the people, Sir Sankaran Nair's conduct was throughout characterised by sturdy independence; when the Simon Commission was sent out to India, Sir Sankaran Nair was one of the very few Indians who co-operated with the work of that Commission; he was

made the Chairman of the Committee of the Central Indian Legislature appointed to co-operate with the Commission ; the report of that Committee was largely shaped by the political views of its chairman. It recommended the rapid advance of India towards Dominion Status and proposed provincial autonomy and responsible Cabinet control of the Central Government with reservations regarding Defence, Foreign Relations, and the Indian States.

THE SIMON COMMISSION

Although Sir Sankaran Nair agreed to co-operate with the Simon Commission, he was too shrewd to be led by such co-operation to accept the Simon recommendations. Discussing the Simon Report and Recommendations, he said :

It cannot be too strongly insisted upon, that the Simon Commission did not arrive at their conclusions after consultation with the Indian Committees.

He pointedly referred to the significance of the boycott of the Commission and of the Non-Co-operation Movement in these terms :

Indian political leaders will not delegate their responsibility for framing the future constitution to Englishmen. The destiny of India is in Indian hands, not in the hands of Englishmen. Failure to realise this may lead to a conflagration which will involve untold misery to India, England and the World.

He made out a strong case for the scheme of Self-Government to be left to be framed by the Indians themselves :

The claim of India is that she, without any Englishmen, should be allowed to formulate a scheme of self-government, rests among others on the two following important grounds : India is in almost every respect so different from England that it is scarcely possible for Englishmen to put forward any real scheme of self-government that would be beneficial and would attain its purpose. We are satisfied from what we have witnessed that many, if not all the,

experiments made have resulted in disaster to the people of India. The classes, the communities, and the castes vary so much that it is practically impossible for Englishmen to deal with social and political problems with any fair degree of success.

Sir Sankaran Nair is still with us and in robust health, and his opinions on political and legal reform command public attention, bearing as they do the strong impress of his great experience and robust common sense.



MR. V. KRISHNASWAMI IYER

WHETHER for brilliancy of parts or versatility of talents, the late Mr. V. Krishnaswami Aiyar stood unique in Southern India. His was a life devoted, amidst the distractions of a busy professional career, to the good of the country at large, to which he gave his wealth as abundantly as he earned it.

EARLY LIFE

Mr. Krishnaswami Iyer was born of orthodox Brahmin parents at Tiruvadamarudur, in Tanjore District, in June 1863. His father, Mr. Venkatarama Iyer, commenced his career in the mofussil Judicial Department in which, by dint of hard work and honesty of purpose, he rose to the position of District Munsift. He married twice and had in all six sons, four by his first wife (of whom two younger than Mr. V. Krishnaswamy Iyer died young) and two by his second. Mr. Swaminatha Iyer, the eldest of the sons, graduated in due course in Arts and Law and entering the Madras Judicial Service, rose to be a Sub-Judge. Mr. Krishnaswami Iyer learned English at the Tiruvadamarudur School, and when seven years' old he joined the S. P. G. School at Tanjore, then in the hey-day of its fame, under the Principalship of the late Dr. Marsh. Young Krishnaswami appears to have been much impressed by the ideals of that distinguished South Indian educationist, and, later, the grateful pupil was chiefly instrumental in founding a scholarship in his name to mark his indebtedness to him. When he

was in the Matriculation class, Mr. Krishnaswami was transferred to the Kumbakonam College, then renowned as an Educational Institution of the first magnitude, under the fostering care of the distinguished educationists, Messrs. Porter and Gopala Rao. To Mr. Gopala Rao must be traced the love that Mr. Krishnaswami Iyer ever bore to classical English literature. Having matriculated in 1877, he passed on in 1878 to the Junior F.A. Class, and in the succeeding year he joined the senior F.A. at the Presidency College which was then under the guidance of that great Educationist, Mr. Edmund Thompson. He graduated a B.A. in Logic and Moral Philosophy in 1882, in which year he won several prizes for proficiency in English, Sanskrit and Philosophy. A taste for science made him join the Science section of the B.A. classes, and this continued for some time until his legal studies compelled him to lay aside permanently his pursuit of knowledge in this direction. He took the B.L. degree in 1884, after a course of two years, with Sir P. S. Sivaswami Iyer, K.C.S.I., ex-Member of the Madras Executive Council.

CAREER AT THE BAR

Mr. Krishnaswami apprenticed himself to the late Mr. R. Balaji Rao, then a leading Vakil of the High Court at Madras. He was enrolled as a Vakil early in 1885, but, like other great men, he had to wait for briefs. There are grounds for believing that they were so late in coming that, at one time, he thought of migrating to some mofussil centre where a living could be made more easily. This, however, luckily never came to pass, and Mr. Krishnaswami had no cause to repent for his final resolution to give Madras a trial. About this time, he was introduced to Dr. Sir S. Subramania Iyer, then a leader

of the Madras bar, and Mr. Krishnaswami got at last an opportunity to show the stuff he was made of. Sir S. Subramania Iyer has thus described the exact circumstances under which he came into contact with him :

My acquaintance with Mr. Krishnaswami Iyer began more than 25 years ago. I first met him with our common friend, Mr. Justice Sundara Iyer, who had then become my apprentice in view to his enrolment as a member of the local bar. Ever since for a period of ten years there was scarcely a morning that we did not meet. Those meetings I never could forget. They were full of advantage and profit to me. We used to discuss many subjects, including, of course, law, and it is no exaggeration to say that at least in regard to the last-mentioned subject I learnt more from them than I had learnt during my fairly long previous practice in the profession. From the very first I found that the key-note to Mr. Krishnaswami Iyer's nature was service to others, to his fellow-men, to his country.

Once the opportunity came, it was not long before Krishnaswami's hard work, quick comprehension of details, and easy application of authorities to knotty questions of law produced an excellent impression on that great lawyer. Years of co-operation with him only strengthened the first impression made on him, and if Sir S. Subramania Iyer was one of his warmest admirers, it was because of the worship that talent exacts from its votaries. In 1890, he joined three other lawyers, *viz.*, Sir C. Sankaran Nair, Sir P. S. Sivaswami Iyer and P. R. Sundara Iyer, in founding the *Madras Law Journal*, one of the best professional journals of its kind in all India, and did excellent work for it. His contributions to it as Joint Editor for over eighteen years were characterised by profundity of learning, critical spirit, and a knowledge of first principles. It is for these traits that this *Journal* has been noted, and it has owed its pre-eminence in its line as much to Mr. Krishnaswami as to any of his colleagues at the start or afterwards. His increasing fame as a lawyer brought him soon to the

notice of the authorities, and it was not long before he was appointed a lecturer on Law at the Madras Law College. Here he taught that medley of Indian law known as the "Civil Procedure Code"—which has been made to yield to the combined talents and industry of a Ghose, a Jenkins, a Macleane and a Richards—and the manner in which he made that branch of law yield to his analytical skill, only those who had the pleasure of hearing him as learners could adequately describe. He had the Code at his fingers' ends and the manner in which he quoted the sections one after another and made them yield what he aimed at was truly marvellous. Another strong point about him as a lawyer was the sound first-hand knowledge he had of the Hindu law and its text-writers. An excellent Sanskrit scholar, he lived his home life, as it were, in the company of trained Pandits and Scholiasts. Between 1892 and 1895, his practice had grown to such dimensions that he found it impossible to continue as a Law Lecturer in the Madras Law College. He therefore resigned that post in 1895, to devote his whole time to his professional work.

PREPARATION OF BRIEFS

He was a perfect master in the art of getting up a case; often, while yet a junior he was solely engaged to get up a single point of law and this he did invariably well. One who has closely watched him both as a student and as a junior hits him off rightly when he says that "his method of preparing cases for presentation in court was at once thorough and exhaustive, one peculiar feature being the certainty with which he could anticipate what his opponents would say. He spent as much thought in anticipating how his adversary could present the case against him as in finding out how best he could present his own client's case, with the result that Mr. V. Krishnaswami

Iyer was rarely, if ever, taken by surprise and had his reply ready on all points that might be urged against him". He was highly resourceful and could as easily fling a retort at his adversary across the table as quote a "sacred text" to silence a sceptically minded Judge on the bench. "When the case took an unexpected turn," says the writer already quoted from, "owing to production of some new piece of evidence, or when the Judge started a new line of enquiry, or when owing to pressure of work and paucity of time he was not able to give as much attention to his brief as was his wont, Mr. Krishnaswami Iyer was the man to stand up and face the situation. Undaunted by the difficulty of the task before him, his fertile brain would suggest some device, some answer, some tactical move, which for the nonce at least silenced his opponent, and covered Mr. Krishnaswami Iyer with glory." His method of taking instructions from juniors, has been described to be Socratic. "He had not the time," it is said, "to listen to a long discourse by the junior. He used to ply him with a number of questions and if only the answers were given readily, Mr. Krishnaswami Iyer was master of the case in a third of the time which would have been necessary if the junior had been allowed to state his case in his own fashion." As a senior, he was kind and generous to his juniors, whom he rewarded amply for their labours. Yearly he took a number of apprentices to work under him, though he did not take fees from all of them; whenever a fee was offered, he had it paid into the coffers of some institution which required aid, generally to the Mylapore Girls' School, in which he took keen interest to the day of his death. In his professional career, he crossed swords with almost every one of the leading members of the Madras Bar, Indian and

European, not excluding the late Sir V. Bhashyam Aiyengar, the late Eardley Norton, the late Mr. Justice Sundara Iyer, Mr. Garth of Calcutta, and Sir P. S. Sivaswami Iyer. He appeared for one side or the other for over a full decade in every important case that cropped up in this Presidency. Special mention may here be made of his brilliant address in the Nidadavole-Medur suit, which drew (it has been remarked) unstinted admiration from Mr. F. H. Hamnett, I.C.S., one of the most experienced of District Judges in this part of India, and his eloquence in the Vizianagaram Will Case drew the admiration of the District Judge, N. S. Brodie, I.C.S. His cross-examination of Sir George Arbuthnot in the Insolvency proceedings against him in 1906 and his subsequent address before the Insolvency Commissioner which immediately led to charges being framed against him, ought still to be fresh in the minds of most men in this Presidency. He appeared for his friend Sir V. Bhashyam in the case he instituted against the late Mr. G. Parameswaran Pillai for defamation in 1896. And his selection by Sir Bhashyam shows the estimation he was held in by that eminent and erudite jurist. There, his forensic abilities show to the best advantage and though mainly an appellate side lawyer, he showed his ability as a great criminal lawyer skilled in the art of cross-examination.

AS A LAWYER

His principal characteristic as a lawyer was, according to one who had closely watched him,

his firm grasp of what are called "the principles of law" as opposed to "authorities". He would often express opinions on points of law by merely arguing with reference to fundamental legal maxims, and an investigation of the authorities nearly always bore out his view. This knowledge of principles enabled him to easily meet questions put from the Bench on novel points of law on the spur



V. KRISHNASWAMI IYER

of the moment, and to effectively present points not covered by precedents. His knowledge of case-law was at once extensive and accurate. So real and intimate was his acquaintance with the Law Reports that often he would state from memory the names of the Judges who decided a particular case, and of the practitioners who appeared in it. Even in the midst of pressing professional work, he was a regular and critical reader of the Law Reports, both Indian and English, and had a wonderful memory for *obiter dicta*, and points that could be inferred from a judgment and not expressly decided. As an advocate his chief characteristics were his power of clear and telling narrative, oftentimes illuminated by passages of genuine eloquence, his ability to carry the complicated facts of a case in his memory, his talent for the marshalling of confused facts, and his keen and critical analysis of the motives of the actors in a particular transaction. If he had lived in a country where the Jury system prevails to a larger extent than in this, he would have been a great "verdict-getter". In this and in some other matters his ideal advocate was Sir Charles Russell. Mr. Krishnaswami Iyer was well known for his powerful cross-examination of witnesses, which, though it was not dramatic and did not get him the popular applause which some less able men were able to get, aroused the admiration of those who closely watched the proceedings. His was not the style that trusted to accidents to break down a witness. He gathered materials in time, and was more anxious to get useful and real admissions from a witness than to hold him up to ridicule. In his written opinions Mr. V. Krishnaswami Iyer was never diffuse, and would rarely refer to any decision which was not altogether relevant. In this and in other phases of his work as a lawyer, he always protested against the practice of citing a beadle of decisions which, though not entirely irrelevant, did not carry the argument any step further. His advice to his clients was clear, concise, and definite, characteristics which the Board of Revenue is said to have appreciated much when he was consulted by it in its capacity of the Court of Wards.

Mr. Krishnaswami Iyer was ever zealous in protecting his client's interests and did not allow his personal feelings to influence him when, owing to his absence in the mofussil, he had to entrust to some other Vakil important cases in the Madras High Court, in which he had been engaged. Thus it happened that a Vakil, no personal friend of his but one who carried his enmity towards him even beyond the grave, not unoften used to get briefs in important cases referred to him by Mr. V. Krishnaswami Iyer, of course, with correspondingly heavy fees. Asked by an intimate

friend the cause of this rather unusual behaviour on his part, he vouchsafed the characteristic reply that, in matters where his client's interests were concerned he was bound to consult first and last only those interests and that, as he felt that they were safer with that Vakil than with any other, he had to engage him, without allowing his personal feelings to influence his judgment.

Speaking of him in one of his lectures on "Reminiscences of the Bar", Sir P. S. Sivaswami Iyer, who, as he himself says, was Krishnaswami Iyer's friend and class-mate and distinguished compeer, observes in his critical but generous estimate of him as an advocate: "Taking all things together, in subtlety he might not have been superior to Sir Bhashyam Iyengar, in quickness of perception he might not have been superior to Sir S. Subramania Iyer, in learning he might not have been superior to Mr. Sundara Iyer, and in eloquence he might not have been superior to Mr. Eardley Norton, but taking all in all, there was no one who combined all the essentials of an advocate as Mr. Krishnaswami Iyer did. He was undoubtedly the ablest all-round advocate that I have known in the Bar in my time and when I pronounce that opinion I include all the men whom I have known whether they belong to an earlier generation or to the same generation as myself."

AS JUDGE

Mr. Krishnaswami Iyer was raised to the Bench in October 1909, and even those who had never shown themselves over-friendly to him, acknowledged his elevation as well deserved. His appointment was as an Eighth Judge after the Eighth Judgeship was sanctioned owing to the necessity for clearing the arrears in the High Court of Madras about which discussion took place in the Legislative

Council. He more than fulfilled the expectation about him and did a great deal to clearing off the arrears of cases in the High Court.

His career as a Judge was all too brief as he was elevated to the membership of the Executive Council in January 1911. But in the short time he sat on the Bench, he instilled a greater reverence for professional honour towards which end he induced the High Court to institute a course of lectures on professional conduct to apprentices-at-law. A few disputed questions of law, too, he was instrumental in settling by his learned judgments. These were always lucid and pointed and withal recondite. He quickly grasped the main point of a case and came to very quick decisions though he was open to conviction till the end of the hearing. Very often he disposed of all the cases in the daily cause list and sent for the other cases posted before the other benches.

AS A PUBLIC MAN

As a young man, Mr. V. Krishnaswami Iyer showed his organising capacity by the part he took in founding the Madras Vakils' Association—a flourishing body of which he was, until his elevation to the Bench, the Secretary. He wielded a facile pen, and quite early in life contributed to the columns of a well known Madras Indian Daily. He was early attracted to the work of the Indian National Congress, the third session of which was held at Madras under the Presidency of that distinguished son of India, Mr. Badruddin Tyabji, afterwards a Judge of the Bombay High Court. He got to like Mr. Tyabji and his winning manners, and his eminently satisfactory conduct as President, so much that he ever after cherished the highest feelings of reverence for him. It was his wont too to hold him up as the model of what a Chairman of a deliberative

assembly should be. He was, for long, a member of the Madras Mahajana Sabha, and was one of the first members of the Madras Provincial Congress Committee organised in 1908. He attended the well known Bombay Session of the Congress of 1889 which was attended by the late Mr. Bradlaugh, as also the Calcutta Session of 1890, when he made his maiden speech on the Congress platform. The resolution he had to move was that relating to the expansion and reform of the Legislative Councils, and he had a highly critical audience to combat with. But he hit off nicely and well, and the debating qualities that were latent in him were fully brought into play.

Speaking on first principles, he instanced the case of Mysore and spoke as follows :

To return to the charge of want of moderation. Look at a province which is directly under the control of the Government of India—the province of Mysore. That province has had a representative assembly for the last ten years. In the year 1881 the Dewan of Mysore created the nucleus of a representative assembly. It did not possess political privileges, but it had the right of stating grievances to the Maharaja. Last year, I believe, the Dewan of Mysore made a new and important departure with regard to the constitution of that assembly. As the arrangement now stands, the franchise is restricted to persons having a certain property qualification—the payment of 100 rupees to the Government; but Local Boards and Municipalities are also entitled to elect a certain number of members. The persons elected in each district meet in the district itself and they elect representatives to attend the representative assembly in Mysore, and that assembly has a right to put any question it likes to the Dewan and the Maharaja, and is entitled to receive an answer. That assembly has been created in a province which has not received the benefit of liberal education to the same extent as the provinces directly under the control of England, and has enjoyed this privilege in its original form for a considerable time, and the statesmen ruling over that country have testified to the wisdom of the further advance made by the present Dewan.

I should like to read one short paragraph from the speech of the late Dewan, Mr. C. Ranga Charlu, C.I.E., delivered on the 26th of October 1882, to the Mysore Representative Assembly.

He said: "If the spread of any high degree of education among the great mass of the people were to be insisted upon

as a *semi qui non*, we may have to wait for ever; meanwhile every year under an autocratic system of Government will find the people less fit for representative institutions. The sprinkling of educated men who are sure to be found in these representative bodies will serve for all purposes of leading and guiding, but what is required in the great body of the representatives is common sense and practical views, which are sure to be possessed by men of ordinary knowledge engaged in industrial and other useful occupations."

It was not, you see, that the people should all of them be educated: it was not that there should be a large proportion of the people educated before they were entitled to have conferred upon them the privilege of electing members to the Legislative Council; the mere fact that there is a considerable body of the people, not necessarily a large percentage but a large body of educated people, who are qualified to take an intelligent interest in the proceedings of the Government, entitles them, according to the late Prime Minister of Mysore, to a voice in the administration. The fact that they are a "microscopic minority", or that they are not a large percentage of the people, is not to form a reason for their being debarred from enjoying the privilege of electing members or discussing budgets. (Cheers.)

He took a prominent part in the work of the Session of the Congress of 1891, and again in the Congress of 1898 at Madras. The resolution he had to propose was that relating to an additional member of the Executive Councils of Madras and Bombay. After tracing the history of the progress of the Council, he concluded his speech in these weighty words:

The addition of a native member to the Executive Councils is, as I have told you already, of very great importance. You speak of the Press as the interpreter between the governors and the governed. You speak of the Congress itself as one of the great interpreters that you can organise between the governors and the governed. We are here to tell the Government what we want, we are here to tell the people outside what the intentions of the Government are. Can you have a better interpreter of the wants and aspirations of India than the person who has got the confidence of the people but who at the same time possesses the confidence of Government and who will be able to explain to them our feelings, who will tell them that even when we seem to go astray we are not going astray by reason of any improper impulse and who will tell us even when the Government is acting wrongly it is not acting wrongly from bad motives, and therefore a person who will be able to cement the governors and the governed and will bring about a

harmonious relation quite as much as any agency that has been at work in this country? Therefore I ask you, gentlemen, to give your adherence to this proposition.

Mr. Krishnaswami was elected Secretary to the Reception Committee of the Madras Congress of 1903, and the energetic work he did on that occasion, despite the difficulties caused by heavy rains, won general admiration. One suggestion he made at this session deserves to be noted. In the Subjects Committee he suggested the acceptance by the Congress of a constitution. This was not done for various reasons, and it is just possible that the catastrophe that happened at Surat somewhat later might at least have been combated more effectively. He was present at the Bombay Congress of the following year (1904), and it was here he offered to defray the expenses of a delegate from Madras to England to advocate the cause of India and do propaganda work there. At this Congress, he spoke on the comprehensive resolution dealing with representation in the Legislative and Executive Councils in India, and in the India Council and the House of Commons. Regarding representation in England, he observed :

That item in the resolution that you have before you is the request on our part that two Indian representatives from each Province of the Empire may be allowed to sit in the British House of Commons in order that the six hundred and sixty-five members already there may govern the destinies of this Empire with a better knowledge and a broader appreciation of the wants and feelings of the people of this country. (*Cheers.*) I know it is a great problem; I know it would require the amendment of many a Statute which governs the Constitution of Great Britain and Ireland. I know it is only a part of a larger problem which, if once solved, would enable the Colonies to become parts of one Federated Empire, and the solution of which is the dream of politicians like Lord Rosebery and Mr. Chamberlain. I hope that, when that day comes it will not be considered that India alone of the various members of the Empire should stand out, and while England chooses to take the Colonies to her bosom, India shall be left in the outer Court of the Federated Empire, so that she may not have any place in it to govern the destinies of the Empire. This may not be an item in our programme that we may expect to achieve. It may not

be an item that we may expect the Viceroy or the Government of England to assent to, but it is an item which we must always bear in mind, which we should always appeal to and to which we should invite attention of the Government, so that they may feel that this is the ideal we place before them for the right and proper government of the people of this country.

He also took part in the Congress of 1905 held at Benares when he delivered telling speeches on two subjects. The first of these dealt with Parliamentary control over Indian affairs, and his speech was a closely reasoned one. He said :

The periodical enquiry to which the administration of this country was subjected at the hands of Parliament under the dictates of the people who were a zealous body of monopolists has ceased to be made, and because that enquiry has not been made, the British people, the great British nation, is not aware of the real situation of the various problems that are agitating the minds of the people of the country (*hear, hear*). We are not asking for any particular boon from the British people or the British Parliament (*hear, hear*). We want them to understand our position. We want them to enquire into our condition ; we want them to study the problems that are engaging the attention of the people and the administrators of India ; and with the knowledge so acquired we want them to govern this country with wisdom. Gentlemen, in 1773, which was one of the years in which the East India Company's Charter had to be renewed, the Regulating Act was passed. The year 1793 witnessed the great Permanent Settlement that was inaugurated by the Government of Lord Cornwallis. In the year 1813, another stage in the renewal of the Company's Charter, the great book was prepared which is known as the fifth Report of Parliament and which contains a record of the rights of landlords and ryots of this country. In the year 1833, it was first announced by the British Parliament that the people of this country shall know no distinction from the people of England in all the offices, in the emoluments and in all that is good in this land, so far as it is possible for the Government of the country to confer upon any body (*cheers*). In the year 1855, the doors of the Civil Services were thrown open for competition. It was no longer the case of writers or clerks being selected by a particular body of men to administer the affairs of this country, but it was through the open door of competition which knew no distinction of class, creed or race—it was through this door that the Governors of this country were to come. Now, gentlemen, in 1858, the Government of the country was transferred to the Crown. Then ceased all further enquiry on the part of Parliament into the administration of the affairs of this land. It is true that

there have been Committees of Parliament occasionally appointed. It is true that in 1874 there was a Committee of Parliament, under the inspiration of Mr. Fawcett, to enquire into the condition of this country, and that was followed by great results. It is true also there was the Welby Commission appointed much later; and although the fruits of their labours were not great, still even that commission was able to reduce the burden of this country to the extent of £25,000 a year. This shows the great advantages which this country has enjoyed from periodical Parliamentary enquiries.

The other resolution on which he spoke referred to the repressive measures in Bengal. He said :

Gentlemen, the policy of repression is a policy that is truly unconstitutional. The right of public meeting and the right of public speech are the inalienable rights of every British subject, and it will be impossible for Britain in the twentieth century to go back upon the best traditions of the British Rule, to go back upon the wisdom of Parliament which has established, not merely for the people of England but for people of all countries of the world, that people of the countries shall be governed according to the wishes and aspirations of the people of the land which is to be governed. Gentlemen, England has not hoped to build an empire on the dangerous quicksands of racial antagonism or official domination. But England has hoped to build this empire on the affections of a loyal people (*hear, hear*), and I venture to submit that the statesmanship of England which is not altogether dead, Sir,—I believe the statesmanship of England will be equal to the task of solving the problem that has been agitating the minds of the people of Bengal in a manner that will be satisfactory to them, that will re-establish the confidence of the people in the wisdom and statesmanship of the great British nation. (*Cheers.*)

He took a very active part in the Congress held at Calcutta in 1906. He was the prominent Madras Leader there and he made a telling speech on the Boycott Resolution, and thereby became greatly unpopular with a section of his countrymen. His work at the disrupted Surat Congress of 1907 won the admiration of men like Dr. Rash Behari Ghose and the Hon. Mr. G. K. Gokhale, and what is more, saved the Congress itself from the fate that had nearly overtaken it. Men had read history but forgotten its lessons. Mr. Krishnaswami read it to purpose and he

was nothing, if not resourceful, and it was at his suggestion that the Hon. Mr. Gokhale, Sir Pherozeshah Mehta and Dr. Rash Behari Ghose agreed to the calling of a convention to tide over the *impasse* created by the extremist section of Congressmen. The convention did its work quietly and the first constitution of the Congress was drawn up by the very person who had proposed it, with no little foresight, as the events proved, some years ago. Undaunted too, he invited the next session of the reorganised and reconstituted Congress to Madras in the cold weather of 1908, and that session was rendered possible only by his organising powers, his exuberant energy and powerful influence, and it will long be remembered as the first in the new order of things that it soon betokened. Its work furnished convincing proofs to both the Government and the people of the solidarity of Indian feeling behind its demands for redress of just grievances, despite the wrong notions of a few. That idea has undoubtedly left its mark on the recent history of India.

TINNEVELLY CONFERENCE

His popularity was at its height about 1906; in the June of that year he was chosen to preside over the deliberations of the 14th Madras Provincial Conference that met at Tinnevelly. The address he delivered on that occasion was highly praised by competent critics as an excellent *resume* of the Indian position at the time. At every step it shows how carefully Mr. Krishnaswami Iyer had studied public questions, and how well he had posted himself in the literature relating to them. He appears to have spared neither energy nor trouble in mastering details, and how well this method ensured the soundness of the generalisations arrived at by him will be apparent to all who read this great speech of his.

He reviewed every phase of our national activity. He spoke at great length on the need for the spread of education and enlarged on the importance of Technical education in particular. After criticising the existing law bearing on the management of Hindu religious endowments, he emphasised the oft-repeated demand of the separation of the Executive from the Judicial functions, and concluded with the following thrilling peroration :

But, gentlemen, when that day will be will depend mostly upon ourselves. The Englishman and Indian represent two streams of life which may not mingle and coalesce, though flowing between the same banks. Social customs divide us even more than colour. If we join hands and work strenuously for the common weal, the ideal will soon be realized. But for us public life must be purified and even spiritualized. Public spirit is sometimes a cloak for personal advancement. If, however, we are true to ourselves and true to our country and sacrifice ourselves, if necessary, at the call of duty, mountains of difficulties may be overcome and we shall be within sight of the promised land. We are strong in numbers. We are great in the inheritance of an ancient civilization. We have the example in our history of heroes and martyrs, of sages and saints, who have sacrificed themselves for the nation's good. If only some spark of the ancient fire may light our hearts, we may in our day dispel the surrounding gloom and pass to our successors a brighter and more glorious future. (*Loud and prolonged cheers and shouts of Bande Materam.*)

UNIVERSITY WORK

As a public man, Mr. Krishnaswami Iyer did not confine his attention entirely to Congresses and Conferences. He took considerable interest in education, and his presence on the Senate during the year that followed 1905, when the regulations under the new Universities Act were framed, was of great benefit both to the University of Madras and the general Indian public. He took great pains to study the rules and regulations of other Universities and in the debates in the Senate he usually carried all before him. His work was widely appreciated by both Indians and Europeans, and he was returned, at the next

opportunity in 1907, as the University representative to the Madras Legislative Council. He was a great friend of female education, and evinced great interest in its spread in Southern India. He was for the establishment of a caste Hindu Girls School in Madras worked entirely by well-trained women teachers. He was also for teaching crafts and professions to youths, together with the three R's at all Government aided and private schools. In the Senate, he stood out strongly for the recognition of Oriental learning, and he, with Sir P. S. Sivaswami Iyer, was primarily responsible for the institution of the Oriental Title examination in the University and the framing and adoption of the Siromani and Vidvan Councils of study. In the Industrial Conference that was held in 1908, he took an active part and impressed all with his grasp of and zeal in tackling industrial problems. As a member of the Syndicate, he did very good work.

LEGISLATIVE COUNCIL

In the Legislative Council, he represented the University. But he worked hard to make himself felt in general legislative work. For this he was eminently fitted by his training, debating qualities, legal acumen, and general resourcefulness. He contributed to the amending of that most contentious piece of Madras Legislation, the Estates Land Act, regarding which the Zamindars and the Government held antagonistic views. His work, though all too brief, impressed members of Government and the Governor of Madras, then Sir Arthur Lawley, and made them see what stuff he was made of. His selection, a couple of years later, to the membership of the Executive Council was to no small extent due to the favourable impression he had created on the Governor during these prolonged debates.

IN THE EXECUTIVE COUNCIL.

In January 1911 he was chosen by the Governor, Sir Arthur Lawley, to succeed the Maharajah of Bobbili on the Madras Executive Council. His appointment was received with a general feeling of satisfaction all over India.

The following press comment shows how favourably his appointment to the Council was received by the public in India :

To his new office he brings qualifications and experience of a varied character such as few, if any, of his contemporaries can claim. His intimate knowledge of the Presidency and of its material, economic and political conditions and requirements, acquired during an active public career of nearly two decades, ought to stand him in good stead in his new sphere of labours, and also prove useful to the Government and the public. The responsibilities of his new office are indeed high and onerous, but Mr. Krishnaswamy Iyer's level-headedness and exceptional grasp of large public problems, added to talents of no mean order, will find him equal to the efficient discharge of his duties. Throughout his career he has been a far-sighted, independent, judicious and high-minded leader of public opinion, and also a safe and trusted adviser of the Government whenever his advice on public matters has been asked by the responsible authorities. His past record of public work gives promise of an equally successful and useful career as a Member of the Executive Council. More than any other Indian in Madras, he is eminently qualified to fill this high office, in which he is expected to place before the Government the Indian view of administrative problems which come up for solution. He will prove not merely a capable and well-informed Councillor, but, what is more important, an independent and selfless official.

In this strain almost every journal in India with practically no exception hailed the appointment with delight. It will be superfluous to cull extracts from the papers, as the entire press of India was unanimous in its acclamations and spoke almost in the same words of congratulation to the Government on the excellence of its choice. The following verdict of an esteemed Calcutta Journal, *The Calcutta Weekly Notes*, may be taken as fairly representative of the general tone of Indian opinion in the matter :

The appointment of Mr. Krishnaswami Iyer to the Executive Council of the Governor of Madras is perhaps the best appointment that has been made since the initiation of the Reforms of Lord Morley. Mr. Krishnaswami Iyer is singularly fitted for the high office both by reason of ability and past public services and also as a representative Indian who thoroughly enjoys the confidence of his countrymen. His ability as a sound lawyer and his forensic talents had brought him to the front rank of advocates in Madras. But in spite of his professional success, he had always been the leader of all public movements in his own Presidency and had co-operated with the leaders of public opinion in other Provinces for bringing about the constitutional reforms which mark a new chapter in the history of India. It is but right that the Government should select its councillors from amongst those who have helped on the healthy movement of progress in India. To high legal attainments, acuteness of intellect and general culture, he joins an intimate acquaintance with the aspirations, feelings and sentiments of the advanced section of his countrymen as also with the habits, customs and prejudices of the people in general. These are qualifications which are essential in every member of the Executive Councils of Government. We have the fullest confidence that Mr. Krishnaswami Iyer will be a great success in the new office. We feel that the success of the Reforms is assured if only men like him are invariably appointed in the Cabinet Councils of Government.

The esteem in which he was held, was seen in the spontaneity with which all Madras united in giving him an entertainment on the 31st March 1911 on his elevation to the Executive Council. A very large number of the distinguished persons of ~~all~~ communities and creeds was present on the occasion, including Sir Arthur and Lady Lawley, his former colleagues on the bench, the two other members of the Executive Council and most of the Madras members of the Legislative Council.

WORK IN THE EXECUTIVE COUNCIL

His work as a member of the Madras Government is best described in the words of one of his colleagues. The Hon. Mr. (now Sir John) Atkinson, in his speech at the memorial meeting, said :

To me too it has been given to feel the fire of brain and glow of heart that gave to Mr. Krishnaswami Iyer so strong and so winning a personality. It was, of course, mainly in official

paths that we were brought together. He had had no administrative experience when he joined the Government. As he himself said to me a day or two after that event he was at first only a learner. But what a learner! It was astonishing how rapidly he mastered not only the methods of Secretariat procedure, but the substance and intricacies of all the many complicated questions submitted to him. It was in consonance with his character that he should be rapid in making up his mind, tenacious of his opinion, and forceful in supporting it. Yet he was always ready to hear, most anxious to look at every aspect of a question, and incapable of taking a narrow or one-sided view—a man "that executed judgment, and that sought the truth". It is not necessary for me to speak at length regarding his work as member of the Executive Council. It was its high quality that makes our loss to-day so great. We have lost a colleague, who combined in himself all the qualities that make for administrative success, who could ill be spared, and whose place it will indeed be hard to fill.

While on the official side in the Legislative Council, his quick comprehension, his mastery of detail, and his knowledge of first principles stood him in great stead. He saw through a deficient argument, and inefficient thinking almost in a moment, and rent his adversary's arguments to pieces. His fine debating qualities, however, were little appreciated by his non-official colleagues, some of whom took too literally the statements he made or propositions he laid down. This was most prominently brought out after his cogently argued speech on the Taluk Boards. His qualities would have been better appreciated in an assembly like the British House of Commons, where long Parliamentary habit has enabled people to appreciate an argument even in an adversary. As it was, Mr. Krishnaswami Iyer's position was only too readily misunderstood by some; and there were some critics who made it their duty to constantly harp on his supposed failings, shortcomings, and his contradictions. It is clear that such criticism had not the effect it was intended to produce on him; it failed of its purpose. But it seems a question if it did not impede his work as an Indian Member of Council, a position in

which it was every one's duty to give him all the sympathy and help one could. There some of his critics did a great though, we have no doubt, unconscious, disservice to the country. But patriotism may lead different people into different paths.

HIS CHARITIES

As a lawyer, he was in receipt of a large income by his practice, which he utilised for public good in a most liberal spirit. He munificently supported the Central Hindu College at Benares and was known to be highly in favour of the establishment of a similar institution in Southern India. He was responsible along with his friend Mr. (Justice) P. R. Sundara Iyer for a very large collection from the Nattu Kottai Chettiaras for the Benares College. He founded the Venkataramana Ayurvedic Free Dispensary. By founding this institution, he did a great service to the renewal of the ancient Indian system of medicine and endowed it with about Rs. 30,000 besides the site and building which cost about Rs. 15,000, and the Ayurvedic College at Mylapore, Madras, in 1905, which he endowed by a grant of Rs. 25,000 in cash, besides constructing, at a cost of Rs. 12,500, a fine building for it. He also liberally endowed the Madras Sanskrit College with the sum of Rs. 40,000 besides site and building costing about Rs. 20,000. For the first two or three years he was advancing Rs. 4,000 a year to meet the current expenses of the college till it became self-supporting from outside endowments. He was interested in the industrial regeneration of India and consequently took an abiding interest in the Indian Industrial Association of Madras which has for one of its objects the sending out of promising young men to England to learn new handicrafts, trades and industries. He contributed Rs. 10,000 to

the Servants of India Society, Poona. He was one of the founders of the Indian Bank Ltd. at Madras, a purely indigenous concern run on modern European lines. He was, besides, a keen but judicious reformer of social abuses. He was for a radical change in the present system of managing religious endowments and was not infrequently heard at the Bar inveighing against the utter inefficiency of the law relating to them as they at present stand. He was one of the founders of the Dharmarakshana Sabha. The Ranade Library and Hall owe no little to his munificence. He gave a donation of Rs. 3,000 to it. Many poor students and learned Pandits had generous aid from him. He started the Poor Boys' Fund and Boarding House in Mylapore and was subscribing Rs. 600 a year towards its maintenance. This idea of his was later developed into the present Ramakrishna Students' Home, a model institution now. It may be truly said of him that what his right hand gave his left hand did not know. He had no faith in making charities after one's death. He used to say, charities must be done in one's lifetime and one must see how they thrive. Just before his death, he handed over the management of a watershed in his ancestral village of Arivalimanyalam to the Taluq Board and endowed the same with Rs. 2,000 taking advantage of the provisions of the Taluq Board Act. Speaking on this aspect of his character, Sir S. Subramania Iyer remarked at the Madras Memorial meeting :

None within my knowledge was more eager to spend his money on charities. Down to the last day of his life he was ever alert on finding suitable objects for the exercise of his liberality. From a memorandum furnished to me by one who has the means of accurate information on the subject, I find that during the decade immediately preceding his death, Mr. Krishnaswami Iyer's benefactions and donations came up to no less than a sum of two

lakhs of rupees. This list is, as I happen to know, still not quite complete even with reference to the period which it covers. It was such munificence of his that elicited from Sir Arthur Lawley in presenting the Kaiser-i-Hind medal, the eulogy that Krishnaswami Iyer was moderate in everything except in the use of his well-gotten wealth in promoting the interests of the public.

HIS LOVE OF LEARNING

Mr. Krishnaswami Iyer was a true student all through his life, and learning of every kind appealed to him most powerfully. His reading was wide and various. He was also keenly interested in the study of books on scientific subjects. He spent his leisure hours in the study or discussion of abstruse questions of religion or philosophy with men possessing first-hand knowledge of them. Often he worsted them in argument and they said and appreciated that they had an opponent worthy of their mettle. He often drew out quickly what was in a Pandit or a scholar and his respect or regard for men varied directly with their talents, intellectual grip and conversational powers. Not that he was intolerant of mediocres, but that he was sharp in getting to know for himself what was best in a man speaking or arguing with him. He respected every variety of opinion and did not fight shy of opponents, whether in the Council Chamber or in the Senate. His fine grasp of the educational problem, and his great love of learning, were the causes that induced Sir Arthur Lawley to request him to deliver the University Convocation Address. That address shows not only his comprehensive knowledge but also his constructive powers of thought and the uncommon dialectical skill he possessed, and it was one of the best ever delivered in the University Hall. Holding up for admiration and emulation the ancient ideal of learned poverty, he said :

The goddess of learning, wife of the Creator in the Divine Trinity, has an annual festival in her honour, observed by all Hindu

castes and communities. "Knowledge for knowing's sake and not for the gain it gets, the praise it brings and the wonder it inspires" has been held aloft as the highest end and aim of education. Let not modern conditions of life darken the splendour of the ancient ideal of learned poverty, before which even the diadems of kings have rolled in the dust.

He then pointed out the directions in which the University needs expansion, deplored the want of adequate funds for endowing lectureships as in the English and American Universities and asked permission of the authorities of the University to make a humble beginning himself in that direction by endowing a lectureship of the annual value of Rs. 250 in the honoured name of Sir S. Subramaniya Iyer, for whom he retained to the end of his life highest regard, gratitude and admiration, the only Indian on whom the University has conferred the degree of Doctor of Laws for eminent services to the country. He set apart in his will a sum of Rs. 7,000 in Government Promisory Notes for the Endowment. That was quite characteristic of the man. He was eminently practical in his views, and always ready to show that he would first do what he would commend to others.

DENOMINATIONAL UNIVERSITIES

Speaking of the need for new Universities, he made a pointed reference to the proposed Hindu and Mahomedan Universities. He said :

The area of ignorance to be combated is so great, the historical conditions favourable to culture are so widely present, the departments of knowledge now are so infinite in variety that we may regard with complacency and even satisfaction the brilliant success so far achieved by the promoters of the new Universities with ideals which cannot but be complementary to the culture aimed at by the foundations already in existence. It over a dozen Universities are now engaged in drawing to a focus in centres of learning the intellectual and moral forces of the younger generation of the United Kingdom, how can the addition of

two Universities here to the present five, if adequately safeguarded from becoming "gloomy fortresses of sectarianism", be denounced as unsuited to the area or population or the varieties of Indian conditions, thought and culture? There are vast fields of historical, archaeological, agricultural and industrial research or experiment in which little more than spade work has been done and which demand the assiduous labour of graduates trained along lines differing perhaps in part from those of existing institutions. Religion, morality and philosophy, dearer to the Indian mind than the natural sciences, need more attention than is bestowed in the existing schemes of studies framed on the close adherence to the letter of the rule of religious neutrality.

DESTINY OF THE INDIAN RACE

He did not believe in the intellectual barrenness of his race. He said in his great Convocation speech :

The curse of intellectual barrenness is not upon us. But you cannot seek repose on faded laurels. The land that has produced in the realms of poetry Valmiki, Vyasa, Kalidasa, Tulasidas and Kamban, to name only a few; in the region of abstract thought Kapila, and Kanada, Sankara and Ramanuja; and in the practical sciences Panini and Patanjali, Charaka and Susruta, Aryabhatta and Bhaskara, the land on whose breast have walked the blessed feet of Krishna and Buddha and a host of lesser saints and sages has no need to rear comparison with any quarter of the earth's surface. The illustrious roll is not exhausted. The fruitful womb may yet bring forth children of genius, the stalwarts of coming generations. The mighty stream of masterminds which filled the land with plenty may in a season of drought have thinned to a tiny channel, but signs are not wanting that it may swell again to a flood.

This fine address was destined to be his last great public utterance. For, not long after, he went with many Indian and European friends to pay his homage to Their Majesties on the occasion of the last Coronation Durbar at Delhi. He was unhappily taken ill on Durbar day, and was compelled to return to Madras. After a short illness, during which the best medical aid and the most solicitous care were given, he peacefully passed away on the morning of 28th December, 1911.

The great esteem in which he was held was indicated by the hundreds who came to see him during his last

moments and till he was laid to final rest. In the High Court touching references were made to his sad death, the Court-room being packed to the full with practitioners and others, and all their Lordships of the High Court sitting on the Bench. The Honourable Mr. P. S. Sivaswami Iyer the then Advocate-General, said :

It is with feelings of profound sorrow that I have to announce to Your Lordships the sad news. Whatever movement there was in this country that had a chance of contributing to the welfare of the people enlisted his sympathies. Whether it was the cause of Sanskrit learning, or whether it was the cause of Oriental medicine, or whether it was the cause of the Minda University, or whether it was an economic movement, every movement that had any likelihood or bore any promise of contributing to the prosperity of the people found in him a generous supporter. In private life he was a warm-hearted friend, and exceedingly generous. Of his generosity there are ample proofs and those institutions which owe their existence to his generosity and philanthropy, will continue to be enduring monuments of his philanthropy, generosity, and sound judgment. My Lords, by his death the country has lost a patriotic and public spirited citizen of high aims and earnest endeavour. The Government has lost one of its most valuable Councillors. The cause of learning has lost a munificent patron. To his innumerable friends all over the Presidency his death will be a cause of deep sorrow, and it will be difficult to fill his place again.

His Lordship the Chief Justice, who was visibly moved, then said :

We have all lost a great friend, we have lost a man of very unusual intellectual powers, and of great gifts, and a man who devoted all his strength, and all his energy to the service of the profession, of which he was so long an ornament, and after he ceased to be a member of that profession to the service of the State.

REFERENCE AT THE CALCUTTA CONGRESS

The same day the Indian National Congress began its proceedings under the sense of great sorrow and depression, owing to the sad and untimely death of Mr. Krishnaswami Iyer. The President, Pandit Bishen Narayan Dhar, at the opening of the meeting eulogized the services of Mr. Krishnaswami Iyer to India, and his high place among the leaders of the day. He said :

Before we proceed with the business, to-day, it is my sad duty to convey to you the news of the death of the Hon'ble Mr. V. Krishnaswami Iyer, which took place at Madras at 6 this morning. He was, as you are aware, one of our best men. In his death not only his Presidency, but all India has suffered an irreparable loss. Until he was appointed to be a High Court Judge, we have known him as one of the staunchest supporters of the Congress, and ever since his appointment he has taken a deep and genuine interest in all that concerns the welfare of his countrymen. He was a man of great ability, steady patriotism, and of great sagacity, a man who was honoured, not only in his Presidency but wherever he was known. In him we have lost a great friend and a great patriot. It is right and proper that this Congress should express the sorrow that the whole country feels over his death, and for this I beg that the Congress will authorize me to send a message of sympathy and sorrow to the bereaved family over the calamity which has befallen them.

The following *Port St. George Gazette Extraordinary* was issued the same day, with the wonted marks of mourning:

* * * *

His Excellency the Governor-in-Council desires to express his sense of the great loss which his Government and the Presidency have suffered and to place on record his high appreciation of the wide knowledge, conspicuous ability and sound judgment which the late Mr. Krishnaswami Iyer throughout his all too short career was ever willing to place at the service of his colleagues in the loyal discharge of the duties of his high office.

* * * *

A general mourning from this date to the 3rd January 1912 (inclusive) is requested by Government as a mark of respect to the memory of the late Mr. Krishnaswami Iyer.

SERVICE HIS WATCHWORD

His watchword was service to his country—efficient service. On this aspect of his character, Sir S. Subramania Iyer spoke quite feelingly :

I should not fail to add that in another respect also this want of moderation was observable in his case. In spite of delicate health for four years, he never would spare himself in the assiduous discharge of his incessant duties in connection with his many-sided activities. He was in truth as prodigal of the strength that he possessed as he was with his money in the promotion of public interests as I have just said. I feel therefore no hesitation in saying that none of my contemporaries among my countrymen has deserved

better that signal honour which the proposition moved recommends be shown to Mr. Krishnaswami Iyer.

" ARVA CHARITRAM "

It was this spirit that led him to publish the only book he has left us. The circumstances under which this work with stories of Ancient India was undertaken, are set out by the author in these words in the preface to it :

The idea of making such a collection as this was first suggested by the now famous convocation speech of Lord Curzon, wherein he challenged the ideals of the Indian people glorified in the literatures of their country, scattered in volumes of enormous bulk, some of them even unprinted and practically inaccessible to most, even of those who have a knowledge of the sacred language of India. They could not easily be quoted in refutation of His Excellency's strictures. Many of his hearers and most of his readers felt that the attack was undeserved, but could make no effective reply except an indignant repudiation of what they felt to be a piece of gross injustice. It is not pretended that the collection is exhaustive. But its purpose will have been achieved if it brings home to Indians and foreigners alike that the country has no need to be ashamed of ideals of life and conduct held up to the admiration of the people by the literary genius of its greatest men.

HONOURS

A man so gifted cannot but be widely admired and loved. His own countrymen, with rare exceptions, loved him dearly and fully appreciated his great qualities of head and heart. They had unbounded confidence in him and this confidence he never betrayed. The part he took in the cancellations of the proceedings adopted by Government against Mr. G. Subramania Iyer, formerly Editor of the *Hindu*, showed that he possessed great influence with Government. Government, eager to find and utilise talent wherever found in this country, honoured him, in 1909, by the bestowal of the First Class Kaisar-i-Hind Medal. He was, on Durbar day, made a C. S. I. by His Majesty the King Emperor.

DEVOTION TO RELIGION

To the last, Mr. Krishnaswami Iyer was a true Hindu. But his conception of the Hindu religion, while it took account of the daily routine laid down to the class he was born in, did not end with it. It included high ideals of personal piety, social service, and honouring the learned and the pure-hearted. Though a good student of Indian philosophy, he was no wild dreamer, but a thorough-going practical man. This, perhaps, he owed as much to his intellectual vigour as to his upbringing as a matter-of-fact lawyer. His attachment to doctrinal Hinduism was so great that anybody that was known to be an exponent of it, received at his hands all the help that he wanted. That was how the great Swami Vivekananda, and his work in America, appealed to him. He was never tired of speaking in terms of highest praise of the great Swami, and the Vedantic mission had always his warm and sympathetic support.

His religion, however, did not prevent his making warm friends of those who were not themselves Hindus. He was catholic, it should be remarked, in his tastes. His unbounded admiration of Vivekananda was only equalled by his fraternal love for Mr. Gokhale, both of whom testify in different spheres to what he loved best himself—service to the country and those in it. His catholicity knew difference neither in religion nor in colour. Amongst his best friends of later years were many officials and non-official Europeans of Madras. The Lord Bishop of Madras brought out this feature of his character extremely well at a memorial meeting and it is well worth quoting here. He said :

There were greater qualities than any I have mentioned, which formed the basis of Mr. Krishnaswami's life both in private and in

public. He was animated by a deep moral enthusiasm and was profoundly religious. It might have been thought that his religious earnestness as a Hindu would have formed a barrier between him and a Bishop of the Christian Church. And, no doubt, it is true, that we should have been even more closely united in the bonds of friendship than we were, if we could have seen eye to eye in matters of religious belief. But even as it was, his religious and moral enthusiasm were great bonds of union between us. It inspired confidence and respect to know that he was profoundly in earnest about the greater things of life. Whatever things were pure, whatever things were honourable, whatever things were just, whatever things were kind and loveable found in him a ready and devoted champion. And amid all the varied interests of his life religion always took the first place. He felt and believed profoundly that the welfare and happiness of individual men and women, of States and Empires, and of the whole human race depended mainly on the reality and depth of their religious faith. It was this earnestness about religion and morality that made him a loyal and true-hearted friend. And it was the secret of his power and influence in public life. Men trusted him and followed him because they knew that he did not skim lightly over the surface of a changing world, but his life and principles were founded deep upon the infinite and the eternal.

SOCIAL REFORM

Mr. Krishnaswami Iyer, devoted as he was to the cause of his country, saw there were many directions in which it should be improved if it was to make itself fit for the destiny that awaits it.

In regard to methods of reform, he was for reform on what has been called "national lines". It does not matter what lines we call "national" or "rational": he was for rectification of errors which have crept in and for the removal of abuses that are eating into the very vitals of Hindu society. But it is interesting to reflect what made him choose the "national" for the "rational". It was, we believe, his sense of realism, his eager pursuit of facts, not shadows, and his faculty to get at the root cause of things. He was for investigation first and for action afterwards. That has at least the merit of disarming future criticism, and that is after all the most important thing for moving

inert masses of humanity. His initiative it was that caused the Rt. Hon. V. S. Srinivasa Sastri, P.C., of the Servants of India Society, to prepare his pamphlet on *Marriage after Puberty*, a pamphlet that critically examines the texts bearing on the subject and shows how slender is the basis on which opposition to the custom of post-puberty marriage stands. He was, it might here be added, for a purified Hindu theatre, and his long connection as President of the Suguna Vilasa Sabha from the year 1901 till his death in 1911, shows how much he believed in the stage as an educator of men and women, and the portrait put up by the Sabha in its Hall testifies to their appreciation of his services and his keen interest.

HOME LIFE

One who had known him closely thus wrote of his home life, only a few months before his lamented death :

The routine of his private life and his tastes are dominated by the principle of "plain living and high thinking". Few men of his financial resources live a simpler life. Like most men of his generation he is an early riser, and like the true Brahmin that he is, he takes a bath immediately after, or soon after a morning constitutional. At 6 A.M. you will find him in his *Asram* performing his morning *Sandhya Vandana* which he does with great care and attention. The *Asram* is a thatched shed in his garden, reminiscent of the *Parnakasala* where Vedic Rishis performed their *tapas*, and there he spends the next hour or hour and a half in reading Sanskrit books. It is often some recondite treatise on Hindu philosophy that engages his attention, and occasionally it is some work on a subject kindred to law, such as *Mimamsa* rules of interpretation, or some *Dharma Sastra*. At about 8 A.M. he is at his office desk where he remains till about 10 A.M. It is then that, when he was a Vakil, he met his juniors and clients, prepared his briefs and received visitors, and when he became a Judge, he utilised that time in reading up the records of the cases posted for disposal or in writing judgments. At 11 A.M. he was sure to be found in the High Court if he was in Madras and the day was a working day. Returning home in the evening he spent the earlier part of the night in conversation with friends or in discussing interesting questions of philosophy with Sanskrit Pandits whom he often surprises

with fresh interpretations of explanations of the Shastraic authorities on Hinduism. He rarely attends a club except on special occasions and is not much of a club-goer. Nor is he devoted to sports—few Indians are—though he occasionally plays a game of tennis. His favourite exercise is his morning and evening constitutional. He ends his day with a bath and *Sandhya Vandana*. His tastes are catholic. He has an intimate acquaintance with several of the great classics in the English language. Oftentimes, in private conversation, he would surprise his companions by the appositeness of his quotations from Shakespeare or Milton. One such occasion I remember well. A junior was instructing him on a case which involved a point of law. As is his wont, Mr. Krishnaswami Iyer asked the junior to discuss the point "on first principles" apart from authorities. The junior, however, continued to refer constantly to this decision or that in support of his arguments, when Mr. V. Krishnaswami Iyer said indignantly adopting the language of Shakespeare in the *Tempest* "deeper than ever plummet sounded I will drown the books". Rarely if ever, he reads a modern novel, and shilling shockers and detective stories have no attraction for him. Even when travelling in a railway carriage, he prefers some book noted for the ideas it contains than for the language in which they are clothed. He has a great partiality for the writings of Alfred Russel Wallace, Sir Oliver Lodge, and Mr. Myers dealing with deep spiritual problems in the modern scientific spirit.

He was fond of devotional music, and often listened to the singing of famous hymns from the works of Thayumanavar and from the Thevaram. He believed in religious music and advocated the daily recital of the Vedas to the accompaniment of musical instruments.

AS A PUBLIC SPEAKER

No man was in greater demand as a public speaker in Southern India for well over a decade than the late Mr. Krishnaswami Iyer. If not soul-stirring like Vivekananda, gorgeous like Surendranath, mellifluous like Norton, sarcastic like Dr. Ghose, he never failed to earn the good will of his audience by his incisive style, his apposite hits, and his transparent sincerity. He was at his best when speaking on social and religious subjects, on which he spoke but rarely; in speeches on political subjects he strove to convince and impress rather than to win.

applause. He was a ready debater in the Legislative Council, and often his retorts were stinging. This it was that endeared him to so many of the European members of that body. As an adversary he was relentless, his repartee being severe and unflinching. He tore an ill-prepared speech to pieces, and this unfortunately was often mistaken by some of his colleagues as want of charity towards an opponent. Sir P. S. Sivaswami Iyer refers to his characteristics as a speaker in his "Reminiscences" in the following manner: "He had remarkable gifts of expression; he had a great command of language, of fine literary language and his pronunciation and delivery were excellent. He had a clear way of presenting facts, a loud voice and, what perhaps was not always a distinct advantage, an extremely rapid delivery." Cautious critics, too, set down his criticism to changed views due to official promotion and at times even twisted and tortured passages out of his previous non-official utterances to illustrate their statements. But few who had known him and his transparent sincerity of purpose could have mistaken his intentions.

MEMORIAL MEETING

A memorial meeting convened by the Sheriff of Madras was held on 16th January 1912 at the Banqueting Hall, His Excellency the Governor presiding. At the meeting it was resolved to erect a statue in his honor. His Excellency Lord Carmichael, though he had known Mr. Krishnaswami Iyer only for a short time, hit off rightly his chief merits in a few sentences which are worthy of quotation here. He said:

Even before I came here I knew from what I had heard in England that Mr. Krishnaswami Iyer was a man who was in my view at any rate the sort of man that you want to have in the position which he held as Executive Councillor, a position which, if

it is held by any Indian gentleman must be held by one, who is prepared to have criticism not only from his fellow countrymen but also from British people who wish to notice and certainly do notice how far Indian gentlemen are able to fulfil that sort of duty with credit to themselves. I heard, before I came here, that there was no doubt that Mr. Krishnaswami Iyer was occupying that position and was in that position acting in such a way that he was winning the respect of all those people who look at it probably from the point of view differently from that of Indians, from the point of view of Englishmen interested in India and anxious to see Indian affairs ably conducted, and that he was doing it quite as well as any British subject can do. Therefore I was naturally anxious, when I came here, to see Mr. Krishnaswami Iyer and to make his acquaintance. I found that he was always willing to talk to me in a most free and straightforward manner about subjects which interested him and which I felt ought to interest me. He was perfectly willing to tell me his own views and he was perfectly willing to listen to my views and point out to me where I was wrong. He did that on several occasions, and I was very glad to argue with him on points where I deferred from him generally looking at things and investigating things that he thought I ought to investigate. In that way I got to know him; and as I did not know any other Indian gentleman, I look upon him as the first friend among the Indian community. I am sorry that our friendship lasted only for such a short time.

Mr. A. E. Lawson, Editor of *The Madras Mail*, who knew Mr. Krishnaswami Iyer personally, said :

For my own part, I would like to say that I think that what conduced as much as anything to his popularity amongst all classes was his selflessness, his charity, and integrity, his stern sense of duty and his transparent honesty and sincerity.

Sir Murray Hamnick spoke in feeling terms and his speech was listened to with rapt attention. He remarked :

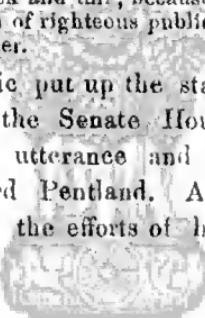
In all my constant association with Mr. Krishnaswami Iyer, during the last year of his life, I never heard him refer to his conversation and talk to any acts of generosity on his part. He never once, I think, mentioned to me any of the numerous charitable acts that he did. I did learn however to appreciate and admire his zeal, his great attainments, his indefatigable energy, his high principle, his extraordinary kindness, his freedom from all ostentation, and his singleness of purpose.

The secret of his great popularity with a very large section of his countrymen in spite of certain minor and obvious defects of temper and speech--which, by the way,

were mostly due, in the words of Sir Arnold White, the Chief Justice of the High Court of Madras who had abundant opportunities of knowing Mr. Krishnaswami Iyer--to his unwillingness to suffer fools gladly--is truly and faithfully explained by Mr. G. A. Natesan, an intimate friend of his who had exceptional facilities for observing Mr. Krishnaswami Iyer's public and private life. In an impassioned communication to the press shortly after the demise of his illustrious friend, Mr. Natesan wrote :

In whatever he did he stood for a principle, fought for a principle, and his numerous friends, admirers and followers all throughout the Presidency, aye, in distant parts of this vast country stood by him through thick and thin, because, great, noble, unselfish and fearless was the path of righteous public duty which he trod in his shortlived public career.

A grateful public put up the statue of his in 1914 in the compound of the Senate House, where he made his last great public utterance and it was unveiled by His Excellency Lord Pentland. As everyone knows, it was due mainly to the efforts of his friend, Mr. G. A. Natesan.



सत्यमेव जयते

JUSTICE SHAH DIN

MIAN Muhammad Shah Din came of a family of historic interest residing near the famous Shalamar Gardens at Lahore, and still enjoying the distinction of being the hereditary custodians of that brilliant specimen of the architecture of the days of Shah Jahan. To quote from a well known book :

The ancestor of the family was Muhammad Ishaq, the founder of the village Ishaqpur, the site of the Shalamar Gardens. Muhammad Yusuf, fourth lineal descendant of Muhammad Ishaq, gave the site of the village of his ancestors to Shah Jahan in conformity with the wish of the Royal Engineer, whose choice for the site of the garden had fallen upon that flourishing village. In lieu of the village, the Emperor granted Muhammad Ishaq the site of the present village of Baghbanpura, the headquarters of the family. This won Muhammad Yusuf the favour of the Royal family, and his son Muhammad Fazil was sent to the Deccan on important duty where he rendered services which secured him the title of Nawab from the Emperor Aurangzeb. Fifth in descent from Nawab Muhammad Fazil was Mian Qadir Bakhsh, the grand-father of the subject of this brief sketch. He was a profound Arabic and Persian Scholar, a physician and a poet. He distinguished himself in another sphere in the reign of the Sikhs when at the desire of Maharaja Ranjit Singh, he learnt the art of gunnery under French Military Officers and wrote a book in Persian on the subject called Miftah-ul-Qila.

The Persian inscription on a gun, cast in the fort of Lahore, quoted in Syed Muhammad Latif's book mentioning the name of Mian Qadir Bakhsh, is of interest in this connection. The translation of the inscription is as follows :

Under orders of His Gracious Majesty the Singh Sahib, the Crown Head of the Khalsa, the King Ranjit Singhji (may his dignity last for ever) this gun, belonging to Diwan Lala Moti Ram and Rani Lal, was completed in the blessed fort of Lahore, under the superintendence of Mian Qadir Bakhsh, in 1881. The name of the gun is "Fateh Jang": The work of Muhammad Hyat.

Descended from ancestors who combined refined intellectual tastes with lives of physical activity, for which those days afforded so much scope, Mr. Shah Din was pre-eminently a man of intellect, and his triumphs were mostly confined to the intellectual arena. The healthy influence which during more than a decade of public life he exercised on his countrymen and co-religionists, had been derived mainly from mental and moral strength. His education and culture, more than anything else, led him on to the pre-eminent position he occupied in educational circles. In the Councils of the Punjab University he was quite a power, and his voice on educational questions commanded wide respect.

EARLY CAREER

His career as a student from his early school days till his return from England is one of considerable interest. Born in 1868, he received his early education in the Vernacular Middle School in his own village, where he stood first in the Lahore District in the Middle School Examination. In this School he got that thorough grounding in Urdu and Persian literature and that taste for indigenous poetry which characterised him and furnished a striking contrast to the majority of England-returned gentlemen in whom high intellectual culture in the language of the West means absolute want of sympathy with the literature of their own land. In the High School young Shah Din continued the promise of his early days, and in the Matriculation Examination headed the list of successful candidates in the Province in the subject of English. Here it is of some interest to remark that his elder daughter later earned a similar distinction in the University. This distinction would have proved fatal to his chances in life, if he had yielded to a suggestion of

taking up employment. By reason of his proficiency in English, he received through his Head Master an offer of Translatorship under Government, but he had the good sense not to interrupt his studies prematurely and resisted this offer. He pursued his College career successfully and got his B. A. degree in 1887 from the Government College, Lahore, standing high in order of merit.

STUDIES IN ENGLAND

In November 1887, Mr. Shah Din proceeded to England to study for the Bar as a member of the Middle Temple. For this new field of studies he showed as much aptitude as he had done for literature, and won three lecture prizes awarded by the Council of Legal Education in Roman Law, Jurisprudence, International Law, Constitutional Law, and Constitutional History. He also gained the Campbell-Forster Prize and a Scholarship from his own Inn. He was called to the Bar in June 1890.

LEGAL CAREER

Soon after his return to India, he won a name in the Punjab as the rising man in the Lahore Chief Court, and was counted till his elevation to the Bench among leaders of the Chief Court Bar. He held for some time the office of Assistant Legal Remembrancer to the Punjab Government, a position to which no other Indian had been appointed in the Province before him. He was appointed a member of the Punjab Legislative Council in 1908 for a term of two years and was re-nominated in 1905 but had to resign his seat in 1906, owing to his appointment as an Additional Judge of the Chief Court. He reverted to the Bar in August 1907 and was appointed a third time a member of the Punjab Legislative Council, but again had to resign his seat in 1908 on re-appointment to the Chief Court.



JUSTICE SHAH DIN

PUBLIC LIFE

His connection with public life began in England where, in conjunction with a few other Muhammadan young men from India, he founded in 1889 the Anjuman-i-Islam, London, which for many years did very useful work and became a recognised institution. The Anjuman was the first institution of its kind in the British Isles, and Mr. Shah Din held the office of its Vice-President till his departure from England. The work thus begun by him in England of influencing the Muhammadan community through educated young men, was taken up in earnest immediately on his return to Lahore where by means of two eloquent addresses, one delivered to a large audience in the Lahore Town Hall, and another before the first anniversary meeting of the newly founded Young Men's Muhammadan Association, he established for himself the position of a "guide, philosopher and friend" to the numerous young men who might seek his help or guidance. He was elected President of the Association, a distinction which he continuously enjoyed, and in which capacity he came in personal and intimate touch with many of the rising generation, influencing and being influenced by them, and thus creating a large following of friends and admirers. Some of those who came in contact with him as students, and in whose progress and advancement he took a lively interest, passed out of their Colleges into active life in the course of time and became men of influence in their own station and a source of strength to him, in whom young Muhammadans rightly recognised a leader of firm principles and strong convictions, whose public and private life furnished a laudable example of devotion to duty, of patriotism and of purity.

EDUCATIONAL ACTIVITIES

His connection with the greatest educational movement of Upper India, represented by the M. A. O. College, Aligarh, and the Muhammadan Educational Conference was both intimate and wholesome ; and the College will long remember the services which he rendered to the institution in order to extricate it from the difficulties that arose after the deaths of Sir Syed Ahmed Khan and Principal Theodore Beck. At the Educational Conference of December 1893, he read a learned and instructive paper in English on "The Education of the Mussalmans in the Punjab", which was widely appreciated for the many useful and practical suggestions it contained. A keen-sighted leader like Sir Syed Ahmed Khan soon recognised in Mr. Shah Din one of the rising men of the Punjab even at that state of his career, and honoured him by suggesting his name for the distinction of President of the Conference for 1894. He was the first to preside over the deliberations of that representative national assembly while yet only twenty-six, and he discharged his responsibilities as President so well as to win commendation from the Sage of Aligarh and many of his learned colleagues. He was elected a Trustee of the Aligarh College in 1896 and was till his closing years one of the most influential members of that body. In December 1913, Mr. Shah Din presided a second time at the Twenty-seventh Session of the Muhammadan Educational Conference held at Agra. His Presidential Address on that occasion was considered by all competent judges as one of the best contributions to the existing literature on Muhammadan Education inasmuch as it contained most valuable suggestions on many of the complex educational problems, especially affecting the future advancement of the Muhammadan community. The high intrinsic

value of Mr. Shah Din's Presidential Address may well be appraised by the fact that the then Lieutenant-Governor of the Punjab quoted very largely from that address in the speech delivered by him in 1914 on the occasion of laying the foundation-stone of the New Islamia School outside Bhati Gate, Lahore.

WORK IN THE PUNJAB UNIVERSITY

Sir Dennis Fitzpatrick nominated Mr. Shah Din a Fellow of the Punjab University in 1893, and in 1895 he was elected a Syndic, a position which he held for about ten years. He was for several years Secretary of the Law College Committee, of which the President was the Vice-Chancellor, which controlled the affairs of the Law College, the sole institution for teaching Law in the Province. He also acted for some years as Secretary of the Standing Committee for the preparation of approved vernacular books, which had been constituted by the Senate with the object of encouraging vernacular literature by means of translations from English, and the production of original works in the vernacular. He also represented the Punjab University on the Punjab Text Book Committee for several years and took an active part in the Departmental Educational Conference in the Punjab.

LITERARY ATTAINMENTS

Mr. Shah Din's lectures on literary, educational and legal subjects, as well as his speeches on questions of social or religious reform, have been published in different magazines and newspapers and reviewed very favourably by the Press in this country. He was himself in touch with journalism. During his stay in England, he used to contribute frequently to the journal of the National Indian Association and occasionally to other periodicals. A series of very readable letters from his pen depicting in

beautiful and picturesque language the beautiful natural scenery of the Lake Districts of Wales and Scotland, appeared in the *Civil and Military Gazette* in September and October 1890 which displayed remarkable descriptive powers, a well-developed æsthetical faculty and a wonderful command of English idiom. These were followed up later by a series of graphic letters from the valley of Kashmir which were widely read and admired. Another contribution to legal studies was a paper on Miss Sorabji's scheme of legal relief for *purdah* ladies which was read under the auspices of the Punjab Law Society, of which he was a prominent member and which did good work under the distinguished presidency of Sir Lewis Tupper.

Mr. Shah Din was also an Urdu poet of no mean order and though he could spare very little of his time to devote to the Muse and that only by way of pastime or amusement, some of his literary contributions to the *Makhzan* (the then leading Urdu monthly) excited considerable admiration and enthusiasm. As evidenced by some of these poems, he attracted to his side and influenced such well known Urdu poets and writers as Iqbal, Abdul Qadir, Nairang, Ijaz, etc. A collection of his poems has lately been edited and published by his only son Mian Bashir Ahmad, Bar.-at-Law.

POLITICAL ACTIVITIES

Until the year 1894 the Muslim leaders, headed by the late Sir Syed Ahmed Khan, concentrated the whole of their attention and energies in promoting the spread of education among the Indian Mussalmans. About that time the idea of taking part in the political life of the country began to take root in their minds and an Association called the Anglo-Muhammadan Defence Association of Upper India was started with the late Mr. Syed Mahmood and

Mr. Theodore Beck as Joint Secretaries, to represent Muslim interests with headquarters at Aligarh. Mr. Shah Din along with certain other leading gentlemen represented the Punjab on its Council and when subsequently the late Nawab Mohsin-ul-Mulk organised an All-India Muhammadan Deputation, with His Highness the Agha Khan as its head, to represent the claims of the Muslim community regarding their representation in the Legislature and Public Services, Mr. Shah Din was one of its prominent members. Our readers will remember that this Deputation waited on His Excellency the Earl of Minto at Simla on 1st October 1906, and the recognition of Muslim claims in the Minto-Morley Reform Scheme was the result of its efforts. The idea of starting an All-India Muslim League emanated during the various meetings which took place on that occasion, and its final constitution was adopted at a meeting held in March 1908 at Aligarh under the presidency of Mr. Shah Din. The Punjab Branch of the All-India Muslim League was organised about the same time and Mr. Shah Din was elected as its first President which position he held until his appointment as the Judge of the Punjab Chief Court towards the end of 1908.

ON THE BENCH

From that year right up to the time of his death in 1918, Mr. Shah Din was a Judge of the Chief Court, Punjab, and it was acknowledged on every hand that he had been an acquisition to that Court. He performed the duties of his high office with such marked distinction and success that the Governor-General-in-Council was pleased to sanction his appointment as Chief Judge *sub-protempore* during the absence on leave of Mr. Justice Rattigan—the first time that an Indian was appointed to that high office in the Punjab.

His sense of self-respect, his independence as an Indian Judge, his good treatment of promising junior lawyers, his masterly judgments on disputed points of law will be long remembered by both the Bench and the Bar.

CONCLUSION

There was hardly any non-sectarian public movement or organisation in the Punjab with which Mr. Shah Din's name was not associated, while his share in the success of several movements for the advancement of the Muhammadan community was truly remarkable. The cause of social reform and of the moral uplift of the Muhammadan community was dear to his heart. On several occasions he faced and overcame violent opposition in his own tribe and elsewhere in order to abolish many pernicious social customs which were responsible for the economic ruin and the moral degradation of his community. In this task he had often to sacrifice his own comfort and peace of mind; he was misunderstood and sometimes even misrepresented by people who happened to differ from him. But this did not deter him from what he considered as the most important task of a leader of men in a period of transition and reform.

He was a strong advocate of higher female education, and he and Sir Mahomed Shafi were the first Muhammadans in the Punjab to send their daughters to be educated in Queen Mary's College at Lahore. He believed that while Indian boys and girls should acquire knowledge, both Western and Eastern in the proper proportion, while they should discard antiquated customs that were sapping the foundations of their social and national life, they should at the same time retain those elements of their ancient culture which formed the real essence of the modesty and stability of Oriental nature. In short, conservative by

temperament, he was yet a believer in liberal education and liberal ideas. He had in his nature the invaluable gift of balance of judgment. His insight into men's nature was as remarkable as his foresight in the affairs of life. He was reserved and quiet, but whenever he expressed his estimate of a man's character or gave his advice in vital matters, his pronouncement was almost invariably justified by later events. Always ready to learn, he stuck to his principles in the vicissitudes of life. His seriousness and earnestness were almost proverbial in the circle of his friends and acquaintances, and his presence always inspired them and even the general public with feelings of respect.

He was extremely regular in his personal habits. Although he had a weak constitution, he managed by his regularity and regard for health, to work hard to the end of his days in apparently sound health. He used to get up early, long before sunrise, have a brisk morning walk by himself and be back home in time to get ready for the day and do some work before going to Court.

In addition to his legal work and occasionally preparing his speeches and lectures, he found time to read English literature, particularly devoting his attention to philosophical subjects, to study Arabic regularly with a Monlvi and to go through Urdu books on Islamic history and theology. But towards the end of his days, he had little time left for such intellectual hobbies, though when he could now and then spare an afternoon he would preside over a *Mushaira* (contest of poets) or sit at home listening to a song of Hafiz, Iqbal or Saroor, sung by a young member of the family or to some book on "New Thought". Or again he would exhort the young men of the family to cast off their lethargy, to prepare a speech or a lecture, to organize a reform movement, in short, to

do something useful and not let their lives be wasted in idle speculation or worthless grumbling. Though of a philosophical turn of mind, his life was from beginning to end one of action and work. He was truthful, courageous and always mindful of his responsibilities. He disliked pomp and show, discouraged social functions that entailed unnecessary waste of money, deprecated the use of strong or empty words, insisted upon frugality, simplicity and perseverance as qualities that the Mussalmans stood most in need of. The late Syed Muhammad Latif, the historian of the Punjab, aptly remarked in his book, "He (Mr. Shah Din) is a gifted man of literary genius, and his English attainments are very high. As a public speaker his speeches have excited universal admiration, and as a writer he has shown considerable aptitude. In him young Punjab may feel a just pride. Though still quite a youth, his manners are so polished and his behaviour is so polite and pleasing that he is endeared to and respected by all his countrymen."

These words of the historian of the Punjab written in 1892 were amply illustrated and his judgment fully justified by the achievements of Mr. Shah Din in the different fields of social, intellectual and civic activities throughout the twenty-seven years of his public and official life. He died on the 2nd July 1918, at the age of 50 years and 3 months. His death was universally mourned by all classes and communities, and it was acknowledged on all hands that the province had suffered an irreparable loss in the death of a man, who besides being an excellent speaker, a brilliant writer, and a thoughtful judge, was also an indefatigable worker in the cause of education and social reform and possessed a character and personality which profoundly influenced all those who from time to time came into contact with him.

SIR ABDUR RAHIM

BIRTH AND BOYHOOD

SIR ABDUR RAHIM was born in September 1867; his father was Moulvi Abdur Rub, owner of a Zamindari in the Midnapur District in Bengal; his grandfather, besides being a Zamindar had also been a Deputy Collector, a very big office in those early days. Young Abdur Rahim came of a rich and highly cultured family, and we can trace in Sir Abdur Rahim an inheritance of scholarship from his father and his grandfather. Young Abdur received his early education in the Government High School, Midnapur, whence he matriculated. On matriculating, he joined the Presidency College at Calcutta. He had a brilliant career at College and took his Bachelor of Arts Degree with first class honours before he was twenty years old. His studies at the University did not stop on his becoming a graduate. He continued his post-graduate studies in English Literature and passed the M. A. Degree Examination "first among the first classes" of his Presidency.

মাস্টার ক্লাস

After such a brilliant career at the University, young Abdur Rahim left for England to qualify himself for the Bar. Once he decided to study for the Bar, the Begum of Bhopal's foreign scholarship for Law was naturally awarded to him. He joined the Middle Temple and was called to the Bar in 1890.

AT CALCUTTA

He returned to India at the end of the same year and was duly enrolled as an Advocate of the Calcutta Bar.

He decided to practise in the Presidency Town. While in England studying for the Bar, he had made a special study of both Muhammadan Law and Criminal Law. He had decided to be a Mussalman jurist, studying the original texts and text-books in Arabic or Persian and the Fatwahs of the Mogul Emperors; and he had also decided to build up his practice at the Calcutta Bar as a great criminal lawyer. One characteristic feature of Sir Abdur Rahim is evident from this; that he always considered deeply and looked far into the future and made his decisions early and kept to them in his later life. In the course of three or four years he had built up an appreciable practice and attracted the attention of the Government as an able and learned lawyer conscientious in the discharge of his duty. He was consequently appointed as Deputy Legal Remembrancer, the first step in the ladder of service which led him to the high place of a Membership in the Executive Council of the Governor at Fort William, Calcutta. The position of Deputy Legal Remembrancer he occupied for about eighteen months. Then he resumed practice once again; and on the Appellate side of the Calcutta High Court he soon achieved distinction as an able advocate and a sound criminal lawyer. Consequent upon the reputation he had for scholarship in criminal law and its basic principles he was appointed as the Presidency Magistrate for the northern division of the City of Calcutta—an office not usually bestowed upon Indians. Here, too, he achieved distinction and a name and was considered a capable and conscientious and at the same time a very civil and polite Magistrate. This position he occupied for about three years (1900 to 1903) but the Bar attracted him again and he reverted to practice in 1903. He resumed his old place.

as a thriving practitioner on the Appellate side appearing mainly in criminal cases.

TAGORE LAW LECTURES

But ever since he studied for the Bar, Sir Abdur Rahim had been utilising his leisure hours in studying the Muhammadan Law at the fountain head. He developed a thorough mastery of the original sources and when in 1907 he was appointed as the Tagore Law Lecturer on "Muhammadan Jurisprudence", everybody who knew him felt that the choice was peculiarly apt. And their expectations were more than amply justified. The lectures that he delivered in 1907 were published in book form in 1911 after he had become a puisne Judge of the High Court at Madras.

The book is of great value not only to the busy practical lawyer who usually looks upon Muhammadan Law as an arbitrary collection of rules and dicta based on no intelligible data; but also to those who, though not directly interested in the study of law or its science, wish to understand the true basis and character of the principles which inspire and guide the lives and conduct of the Muhammadan Sunnis, that is, the followers of the four schools of law (the Hanafi, Maliki, Shafi and Hanbali) who form the bulk of the Muhammadan population of the world. The book is invaluable also to the student of historic and comparative jurisprudence as revealing the contributions of the Muhammadan jurists to the science of law.

The chapters relating to "constitutional law and administrative law" and to "the law regulating relations between Muslims and non-Muslims" are original contributions to legal literature and are of great usefulness in these days when attempts are made for bringing about an amity between the Hindus and the Mussalmans in India.

In the concluding portion of the hook, he points out the duty of Muslims in a non-Muslim country which throws a flood of light on the present situation :

As I have had occasion to point out, the Muhammadan law, generally speaking, has two sides. In its worldly aspect, it is enforceable by the Court, and in its spiritual aspect, it affects the conscience of every individual Muslim. The head of the Muslim State can obviously enforce Muhammadan laws only within his own jurisdiction. A Muhammadan living within the territory of non-Muslims is required to conform, as far as is practicable for him to do so, to the rules and injunctions of the Muhammadan law and religion. If he violates them, he incurs religious guilt and when he finds that he cannot stay in a particular non-Muslim country with safety of person and property nor discharge his religious duties there, he is expected to retire to his own State. If such a person finds that the non-Muslim Government actually interferes with his property and reduces his children to slavery or suffers it to be done or is guilty of other similar acts of oppression, he would be justified in interfering with the lives and properties of the non-Muslim inhabitants of the place. The reason is that the Government itself of the country of his adoption must in such circumstance be held to have been guilty of treachery towards him, for he could not have resided in an alien country without its express or implied permission and it is always lawful for a Muslim according to his law to repel oppression. But otherwise, he must forbear from interfering with the non-Muslim Government and the inhabitants of the country of his adoption as that would be an act of perfidy on his part which the Law absolutely forbids.

Mr. Abdur Rahim's Tagore Law lectures revealed his vast erudition and classic scholarship and paved the way for his promotion; when the Madras High Court wanted a Muhammadan Judge and no competent Mussalman was found in that Presidency, the choice easily fell on him. And although consequently Bengal lost one of its best men for a decade and more, the Madras High Court vastly gained by his acquisition to the Bench.

AS A HIGH COURT JUDGE AT MADRAS

When Mr. Abdur Rahim was appointed as a Judge in July 1908, he was not much known to the legal world, though his Tagore Law lectures on Muhammadan

Jurisprudence had been delivered only sometime before. An eminent Calcutta Judge introduced him to the Madras Presidency as a scholar and gentleman rather than as a lawyer. But soon after he assumed charge of his office he earned for himself a high reputation as a sound judge endowed in abundant measure with patience and decision, industry and independence, qualities that in the main go to make one a successful and popular Judge. It is no disparagement to say of him that he lacked the legal erudition or familiarity with case-law which some of his colleagues possessed. For his robust common sense, his firm grasp of basic principles, and his unflinching determination to render impartial justice marked him out as one of the most notable of Indian Judges during recent years. A keen eye to the broad features and the probabilities of a case combined with a due sense of proportion in dealing with the details made him an excellent Judge in the hearing of regular appeals. He had the right perspective in criminal cases, the slender links or the lack of links in the case of the prosecution rarely escaping his searching vigilance. Justice Abdur Rahim did not confine himself to a mere interpretation and administration of the law. He felt that in India, at least, it was the duty of judges to comment upon the legislative enactments brought to their notice, wherever they infringe the fundamental rights of the people and to focus public opinion and the attention of the Government by such comment with a view to secure the fundamental rights by proper legislative amendments. The following extract from his Judgment in the matter of "New India Printing Works" is an illustration in point :

That generally speaking, the terms of the section (Section 4 Press Act) are extremely wide and comprehensive cannot be doubted. They vest the Local Government with a discretion so large and

unfettered that the keeping of printing presses and the publication of newspapers become extremely hazardous undertakings in this country. A press may be devoted to the printing of most useful and meritorious literature or other publications of an entirely innocent and non-controversial nature, yet it will be liable to forfeiture if any matters printed in such a press are considered by the Government to be objectionable within the meaning of the Act Similarly, a newspaper may be consistently staunch in its loyalty to the Government, its general policy may be above all reproach, the sincerity and *bona fides* of the intentions of the Editor may not be liable to question but if any letters or other writings were let in, may be through carelessness, which come within the scope of any of the clauses to Section 4, the Government may at once without any trial or even a warning forfeit the security and in this way ultimately put an end to the newspaper itself. That the influence of a periodical on the public life of the country is on the whole decidedly beneficial need be no bar to the Government's action. The Local Government, it may be assumed, will not indiscriminately exercise the power which it possesses under this enactment; but the vesting of such unlimited power in the Executive Government is undoubtedly a serious encroachment on the freedom which the press in India enjoyed before the passing of the Act.

Mr. Abdur Rahim came to Madras as a Judge in 1908; in 1912 he went out as a Member of the Public Services Commission; on that occasion the *Madras Weekly Notes* said :

Justice Rahim will not be with us in the High Court on its re-opening after the Christmas leave. He is drafted to a place of greater usefulness on the Public Services Commission. On the Bench, he has earned a name for impartiality and independence of character and has maintained its high traditions. If occasionally he has exhibited a temper, we have felt he was not responsible. On the whole, we are sorry we are losing even temporarily one of our ablest and most independent Judges.

The same Journal wrote in welcoming him back as a Judge in 1915 :

We are glad to welcome Mr. Justice Rahim back to his permanent place in our High Court. During his absence, many changes in the personnel of the High Court have taken place. His Lordship is now the senior puisne Judge and his return is very opportune. * * * * We are sure his English sojourn will enable him to maintain the dignity and prestige of the High Court all the better. He would have noticed that in England, as in all civilized countries, the judicial power is an independent and

sacred element and that the legal profession plays a very important part.

OFFICIATING CHIEF JUSTICE

Justice Rahim was Officiating Chief Justice from July to October in 1916 and for the same period July to October in 1919; and it was hoped, before his appointment in Bengal was made, that he would be a permanent Chief Justice of Madras. From what we knew of him as Officiating Chief Justice, we have no doubt he would have filled the place with dignity and prestige, with independence and integrity. A well known member of the Madras Bar sums up the qualities of Sir Abdur Rahim as a judge in these appropriate words:

Mr. Justice Abdur Rahim is another of our highly regarded Judges and has to his credit certain well written judgments on points of Muhammadan Law, like Iddat, gift and Wakt, though on some points his view was not accepted by the Privy Council (see, for instance, his judgment on *de facto* guardianship). He was also a conservative lawyer and no striking advance can be pointed to him. His reputation stands high on account of his manner of disposal and his general attitude on questions as to liberty of the subject.

EXTRA JUDICIAL ACTIVITIES AT MADRAS

Now we will briefly refer to his extra judicial activities in Madras.

Outside the domain of law, he took an abiding interest in educational matters. He was for many years a member of the Senate of the Madras University and also of its Syndicate. He delivered the Convocation Address of the Madras University as well as of the Mysore University, both of which afford us an insight into his progressive and liberal views. He was the President of the Reception Committee of the most influential conference of the Muslim theologians of India, known as Uudwat-ul-Ulama in the year 1916. He was also the President of Majlis-ul-Ulama,

another Conference of Muslim theologians held in Tanjore in the year 1917.

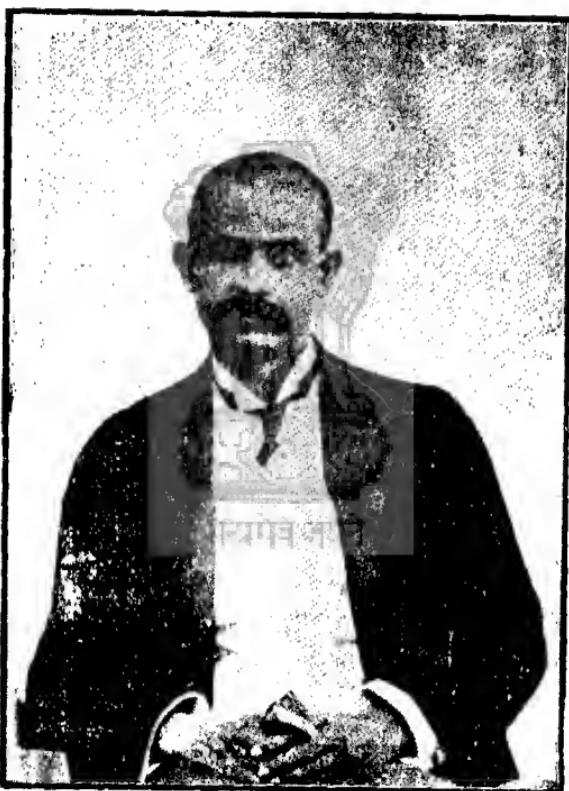
Before he came to Madras, he was instrumental in starting the Muslim League and he took an active part in shaping its constitution. He was a member of the All-India Deputation which waited on Lord Minto at Simla in the year 1904. He was a trustee of the Aligarh University and of the Madras Muhammadan Educational Association and of the Anjuman. He was the President of the Board of Visitors in the Madrasa-y-Azam and the Government Muhammadan College at Madras. He was also the President of the Cosmopolitan Club, Madras.

In all fields of activity, whether legal, political, communal, social, educational or industrial, Sir Abdur Rahim has evinced a great interest and has always fondly cherished the desire of bringing about a spirit of thorough unity in aspirations and achievements between the Muslims and Hindus of this great land.

EARLY HONOURS

Mr. Abdur Rahim, as he then was, was granted II class Kaiser-i-Hind Medal in recognition of his public services as early as 1908. He was and is a loyal subject of the Crown. In the course of a speech delivered by him in Madras sometime before the Coronation Durbar which, he said, was held in order to "enable them (*i.e.*, Indians) to realise that they were no strange inhabitants of an outlying dependency but occupy a place of dignity and responsibility in the Great Empire". He added :

"I am one of those who firmly believe that the connection of India with England is for the great benefit of both ; and I feel sure that the Imperial visit will strengthen that connection by bringing into play feelings of mutual respect and cordiality both between the English



SIR ABDUR RAHIM

and the Indian on the one hand and between the different communities on the other."

Mr. Justice Rahim was knighted in 1919 as a matter of course as he was the senior puisne judge who had acted as Chief Justice for some time. Years later he was made a K.C.S.I. during the period of his membership of the Executive Council of Fort William in Bengal.

MADRAS CONVOCATION ADDRESS

Soon after his arrival in Madras, he was made a Fellow of the Madras University and was selected for the honour of delivering the Convocation Address on 31st March 1910. His address is a welcome departure from the usual stereotyped form, a departure which was emphasised by the Convocation Address of Mr. V. Krishnaswami Ayyar in the succeeding year. He is a firm believer in the good work done by the modern Indian Universities. In answer to a criticism that these Universities turned out godless men, he said :

In the Colleges maintained by the Government, you have not, it is true, been instructed in the tenets of any particular religion. But unless the epithet "godless" is to be used in some special sense, it cannot be a true description of the effect which your education must have had on the moral and spiritual sides of your nature. I do not think it is possible at the present day to assert that the well-recognized code of morals and good conduct has no hold upon a man of culture, unless it be associated in his mind with a particular religious sanction. I admit, however, it would be a matter of serious concern if the teaching of our schools and colleges tended to sap the religious beliefs of our young men. But I feel sure that if I were to assert that you are not good Hindus, Christians or Muhammadans by reason of your having had the best modern education which is available in the Presidency, you would, one and all, repudiate the charge. So far as Hinduism is concerned, I think it is a fact too palpable to be ignored that English education has neither led to, nor been concomitant of, its revival. . . . In a matter like this, I should be inclined to regard the phenomenon in the light in which the educated Hindus themselves regard it. According to them it is but a reversion to the religion of the Vedas, the Upanishads

and the Gita, and I believe many European thinkers confirm them in this view. As regards the Muhammadans, who have been educated under the present system, I know they yield to none of their co-religionists in their devotion to the teachings and ideals of Islam.

From his enthusiastic picture of the influence of home life on the Indian students, we can form a good idea of the influence of his own home life on his scholastic career.

I will just tell you what the home life is of a young man in a well-regulated Muhammadan household, of which I can claim to speak with some knowledge. Every Muhammadan child has his ears filled with the cry of "God is great and there is no God but God" the God who to him is the embodiment of the highest perfection ; he is taught not to begin any work or duty of the day or any undertaking of life, great and small, but in the name of "God, the kind, the merciful" ; he learns to thank the Almighty whenever his efforts are crowned with success and to trust in Him all the more if he fails ; to bend the knees of devotion every now and then each day ; every day he repeats and pores with loving reverence on the words of the Koran, whose divine eloquence has an abiding place in every Muhammadan's heart, he is brought up to find the keenest pleasure in the practice of the most rigid self-denial for one month in each year, and the practice of charity and kindness towards his neighbour is impressed upon him as a legal duty and a high spiritual privilege. Thus brought up, a Muhammadan youth can be trusted never to swerve from his faith. And I may fairly assume that a Hindu boy at home is similarly trained in the practice and tenets of his own religion.

He further pointed out that the religious beliefs are not shattered when a Muhammadan or Hindu youth with such training and teaching is introduced in the lecture-room of his college, into regions of science, philosophy and poetry. "He does not think that the scientist, the philosopher and the poet have any thing better to teach him of the inner meaning of life than Mahammed, Buddha or Sankaracharya. He does not find that the teachings of his spiritual master is in any way inconsistent with the discoveries of science or the speculations of philosophy. He seeks to reconcile the two and is at least himself satisfied that he has done so. He eagerly avails himself of all the results of the

modern movements of thought in order to justify his belief in his own religion."

Sir Abdur Rahim refutes the idea that the present generation of educated people is irreligious nor does he believe that the atheistic movement owes its strength to the Westernised education.

The natural and inevitable result was a quickening of India's intellectual life, but English schools and colleges would have been of little avail, if the new impulse has failed to arouse an adequate response in the religious sympathies of the people. Some resistance it was bound to encounter from that blind force of bigotry which lurks in every society; but the great minds of the time soon caught the Western idea, and having infused it with a religious purpose scattered it broadcast in the land. The great service which English schools and colleges have rendered is to introduce into the country a knowledge of the technique of modern arts and sciences. But all that I am concerned to point out is that the desire for progress which is now so marked among the people was not created by English schools. It was generated by the mere contact with a progressive civilization. It could not be helped.

MAHOMEDAN EDUCATIONAL CONFERENCE

Justice Rahim's keen interest in the problems of education in this country and of Muhammadan education in particular justified the choice of the Presidentship of the All-India Muhammadan Anglo-Oriental Educational Conference, in its twenty-ninth sessions held at Poona in December 1915. The responsibility attached to that office was specially onerous on that occasion. He was expected to guide the community in arriving at a decision on the difficult question of a Muslim University which faced them at that time. Mr. Rahim managed the situation ably and with great foresight and considerable statesmanship. In his Address, he emphasised on the need of Government help in these words:

Gentlemen, at one time much controversy existed on the respective duties of the Government and the people with reference to education. In my opinion, this is not a matter to be dealt with in the abstract. Education is a fundamental necessity

of a community in all its grades. It must be met by whichever agency or agencies are capable of meeting it. In some countries, the people are in a favourable position to organise and look after their children's education, in some directions perhaps even better than the Government. In other countries, such as India, where the Government commands larger resources and a more effective organization than what can be supplied by private efforts, the burden of educating the people has primarily to be borne by the Government. I do not wish to suggest that the people themselves or such of them as are in a position to undertake this civic duty are at liberty to consider themselves relieved of the obligation. All that I mean is, that to the extent the people are unable to help themselves in this respect, the Government is expected to come in and supply whatever is needed. It is primarily the duty of the parents to educate their children; but parents who are themselves illiterate or poor cannot be expected to fulfil that obligation. Hence the most thoughtful men among the people have found themselves driven to look principally to the Government to undertake the national organisation of education and I believe the Government has been realising more and more vividly every day the responsibilities of the situation; to whichever field of education we turn, the tract which lies waste and untouched is immeasurably vast in comparison to what has been yet taken in hand. And to my mind it would be a barren discussion to consider the relative degrees of importance which should be assigned to the different departments of education. The aim in view should be to develop the various energies and talents of the people to their fullest measure; and a little reflection will tell us that the object cannot be achieved unless education in all its different faculties and forms is vigorously pushed on—elementary, secondary and higher education, scientific, literary and artistic, professional and industrial, technical and commercial education of the masses—of boys as well as of girls.

Referring to Mr. Gokhale's Bill, he said :

Unfortunately it came to nothing; I am afraid public opinion, which at the time was not very well instructed, did not express itself with sufficient clearness and definiteness. Since then, however, opinion has in this connection grown with remarkable rapidity so that at the present day there is an universal demand for free and compulsory education. As practical men, we do not expect that such a measure can be applied all at once throughout India. But there can be now no difficulty whatever in accepting the principle and enforcing it in selected areas.

He always emphasised the need for education in Urdu, at least for the Mussalmans :

With a few exceptions, it is the desire of Muhammadans all over India that the vehicle of primary education should be Urdu,

which is not only looked upon as a national language but is practically the only vernacular through which it is possible to impart instruction in the tenets of their religion or in those moral and civic duties which among the Muhammadans are best enforced by the sanction of religion Wherever there is a demand for Urdu schools it should be met, and in other primary schools there should be facilities for giving instruction in the fundamentals of Islam to Muhammadan boys.

In the course of the address, Mr. Rahim urged the need for a combination of training in some useful industry with instruction in the three R's; for the encouragement of the continuation classes to prevent a relapse into illiteracy; and for the proper organisation of a service of popular preachers and lecturers, for it is through the Ulemas that we can best reach the masses. He also pointed out that the state of the community in the matter of secondary education is so depressed that nothing but special remedies will ameliorate the position; and he added: "The education of any portion of a community, if it is a favour at all, is a boon to the entire people, and I cannot think of anything more mischievous or foolish than to cry down measures which may be found necessary to advance education among such portions of the nation as may have lagged behind on the apprehension of communal favouritism."

Emphasising the position of the vernacular in higher education, he said :

Until our own languages receive some recognition as the medium of higher education, the development of advanced branches of knowledge in the country must necessarily be slow.

While pointing out the difficulties that beset Government help, he used this telling illustration: "Among lawyers, the saying is current that the troubles of a litigant begin when he has obtained a decree and seeks to execute it. Similarly, it would seem that the troubles of the Indian public commence when any large measure of reform, after it has been formulated, is brought to the

stage when it has to be carried out"—a proposition which is true not only of Indian education but of Indian politics also.

INTEREST IN STUDENTS

Sir Abdur Rahim had always a soft corner for the students; and he realised their many difficulties and sought to remove them. He protested vehemently against the raising of the standard required of them in their examinations. "The conviction is growing stronger every day," he said, "that under the new regulations the Indian boys are made to do far more work than is good for their physical or mental growth. It is a fact that by the time the educated Indians reach an age when intellect generally attains full maturity and experience ripens, they are mostly incapacitated from any strenuous work by some fatal ailment . . . I feel sure that if an enquiry were instituted on this subject, facts would be forthcoming showing that we are confronted with something like a national danger . . . It is true now-a-days more attention is paid to outdoor games and physical training. But here again it must be remembered that intense physical exertion is not a remedy for the evils of mental overstrain. In fact the two when combined may often result in a greater harm."

With equal vehemence, Sir Abdur Rahim protested against the enhanced fees which bar the doors of the University to the real student who is generally poor. "In the East," he said, "learning has never been considered as a privilege of the rich. In India, one inherent feature of the old indigenous system was the provision of special and abundant opportunities to poor students. Under the new conditions of life, that system has been swept out of existence, and if its provision for the poor students is not generously reproduced under the new regime, I have great

fears that the fame for learning and higher culture which India has always enjoyed from the very dawn of history will soon be lost to her."

Sir Abdur Rahim consequently advocates a generous system of scholarships which will extend right through the primary, the secondary and University stages:

We are also in need of liberal scholarships to help competent students to go through the various professional and technical courses and the opportunities which our young men have of completing their general professional or technical education in Europe and America, ought not to be allowed to be restricted.

Finally, Sir Abdur Rahim emphasises the need for organized endeavour:

Time has arrived when we must organize our efforts on a far larger and more comprehensive scale than hitherto. In every Presidency town we want a central organization which will be in a position to look after the education of the community by means of local agencies throughout the Presidency. There should be different sections dealing with particular branches of education. In every large city, committees must be formed. There must be Branch Associations in District towns and sub-divisions extending at last to every village.

mysore university address

It is this need for organization and co-operation that Sir Abdur Rahim emphasised once again at the Convocation Address delivered by him at the University of Mysore on the 10th October 1919. He said that it should be a distinct and direct aim of the educational institutions to train students in the art and methods of organization and co-operation. One means of doing this is by paying special attention to the promotion of corporate life and activities in schools and colleges and in the University.

To the graduates he pointed out the sacred path of duty:

I have often felt that the full significance of liberal education is not always well grasped in this country. Nothing indeed can be more pathetic than to meet men who have received University education, unable to rise above their cramped surroundings, who

are afraid to think and act for themselves, whose minds are enchain'd to the unrecallable past, men with no adequate perception of the great forces which are shaking the destiny of the world and with no desire to adjust themselves to the changed times. . . . It is the sacred duty of men educated in a modern University to undertake the essential task of social reformation.

The passages that follow (regretting the absence of such liberal movements in India, the utter pessimism of the present-day leaders and the attitude of complacency and satisfaction with the existing order of things that some of them assume, and pointing to the fallacies of the statement that what was good for our forefathers was good enough for us and to the good points of intelligent imitation) constitute a brilliant defence of social reform.

In this Convocation Address, he again reiterated the three main planks in his scheme of educational reform: scholarships, special help for backward classes and adequate pay for the teachers.

A proper and adequate system of scholarships, in my opinion, should indeed be in the forefront of the educational programme throughout.

Effort must be made to give equal chances of education to all communities and castes and not to allow the educational opportunities to be monopolised by the most active and the forward. At the same time the State would itself be a heavy loser if it failed to encourage intrinsic worth or talent simply because it happens to be more common in one community rather than in another.

The educational service should be at least as well paid as any other service and it should be assured an honoured status.

These views on education he had already given adequate expression to in his dissenting minute attached to the Report of the Public Services Commission.

* PUBLIC SERVICES COMMISSION

It is not within the scope of this short sketch to consider the merits of the dissenting minute nor is it necessary now for practical purposes to consider what Sir Abdur Rabim's views were on particular

problems; suffice it to say that the minute has become a political document of great value by reason of the transparent candour and the forceful advocacy which characterised it. His defence of the Indians has become a classic:

No one who lives in India and knows the people can fail to perceive that a vast welding force has come into existence. It may be safe to assert that whatever undesirable significance the caste system may have had in the past, the educated classes of Hindus would at the present day regard it as an undeserved and cruel aspersion of their character to have it suggested that they do not sympathise with the uneducated masses or would not deal fairly with them in the discharge of their official duties.

Further, it must be remembered that care for the poor so definitely enjoined by all the religions of the East, has developed in the Indian character generally almost an overflow of charity and generosity, while the new movements have helped largely to divert much of that fund of philanthropy into more regulated channels.

The keynote of the attitude of Mussalmans is the same as that of the others, a demand for a more intimate and more extensive association of the people with the administration and a complete removal of disabilities.

Answering the stale charge that Western-educated Indians do not reflect the views or represent the interests of the many scores of millions in India, he says:

So far as the views of the latter on any of the matters in dispute or of an allied character are concerned, it is impossible to imagine what opinions they are in a position to form so long as they are allowed to remain, as at present, in their illiterate and appallingly ignorant condition. As for the representation of their interests, if the claim be that they are better represented by European officials than by educated Indian officials or non-officials, it is difficult to conceive how such a reckless claim has come to be urged. The inability of English officials to master the spoken languages of India and their different religious habits of life and modes of thought so completely divide them from the general Indian population that only an extremely limited few, possessed with extraordinary powers of intuitional insight, have ever been able to surmount the barriers. Such knowledge of the people and of the classical literatures as passes current among the European officials is compiled almost entirely from the data furnished to them by the Western educated Indians; and the idea of the European officials having to deal with the people of India without the medium of the Western educated Indian is too wild for serious contemplation. It would be no

exaggeration to say that without their co-operation the administration could not be carried on for a single day.

With the educated Indians, on the other hand, this knowledge is instinctive and the ties of religion and custom, so strong in the East, inevitably make their knowledge and sympathy far more intimate than is to be seen in countries dominated by materialistic conceptions. It is from a wrong and deceptive perspective that we are asked to look at the system of castes among the Hindus more as a dividing force than as a powerful binding factor, and the unifying spirit of Islam, so far as it affects the Muhammedans, does not stand in need of being explained; while in all communities the new national movement has received considerable accession of impulse from the lessons of such arguments as are hinted at in the majority report.

Looking back to past history, India, until the disruption of the Mogul Empire, always produced men of high administrative talents, and at the present day in the more advanced Native States, wherever opportunity exists, Indians are successfully bearing the burden of the entire administration; some of them achieved notable distinction, such as Sir Salir Jung and Sir T. Madhav Rao. It should also be noted that a fair proportion of these men were originally in the British Indian service but only found an adequate opportunity for a full play of administrative capacity when they were appointed either as Ministers or heads of departments in these States.

Speaking of the English recruits to the Indian Civil Service, he says :

There can be no doubt that the offers which Indian services ordinarily get proceed mostly from candidates of average attainments and rather limited outlook, more or less obliged by circumstances to seek for a living in a land which otherwise does not evoke much enthusiasm in their breasts. We cannot look with confidence to recruits of this type as a body to supply the higher order of administrative talent which alone can enable a foreigner to understand the real forces at work in the very complex conditions of modern India and to guide them with sympathy. I have no hesitation in recording my opinion that the country in its present circumstances cannot safely or fairly be called upon to accommodate more than a very limited number of English officials of this class.

Contrasting the Indian and the English official, he observes :

An English official is so far as he represents a high level of Western knowledge and training, has a sincere and earnest desire to help the cause of progress combined with an aptitude for adopting Western methods to the changing conditions of an ancient Oriental country, and above all a determination to deal justly not merely between one Indian and another but what is more

politically important and far more difficult between conflicting Indian and English claims which constantly crop up in various forms, has a very useful career in India and will always be welcomed by competent Indian public opinion. A few such men will considerably strengthen the bonds between the Government and the people; on the other hand, an English official of a lower type or with lower ideals would at the present day be felt as an anachronism and prove a fruitful source of political friction.

Then Sir Abdur Rahim goes on to point out how an English official is at his best but a bird of passage in India, how "he is expensive to train, expensive to employ—two men, roughly speaking, being required to do one man's work—and is a dead loss to the country when he retires". "Even supposing," says Sir Abdur Rahim, "that he initially brings to his work some superior qualifications, still the balance of advantage must in the nature of things be heavily on the side of the Indian official." For, the Indian official has a value to the country far greater than is to be measured by the actual output of his daily routine work; he becomes a centre of further growth.

And again, he boldly and clearly states the Indian point of view :

The point of view from which the majority of the commissioners and myself have approached the question of employment of Indians are substantially different. The question they have asked themselves is, what are the means to be adopted for extending the employment of Indians. But the proper standpoint, which alone in my opinion furnishes a satisfactory basis to work upon, is that the importation of officials from Europe should be limited to cases of clear necessity, and the question therefore to be asked is, in which services and to what extent should appointments be made from England The general policy to be kept in view is that the public service of India should be recruited for in the country itself.

Sir Abdur Rahim, among other things, advocated simultaneous examinations for the Civil Service, protested against high judicial and executive posts including Lieutenant-Governorship being reserved for the Civil Service; and in the field of education, he urged the exclusion of all

professional chairs, whether in the ordinary arts colleges or in special institutions like the medical colleges, from the cadre of any service. He pointed out that to fill these appointments, for which men of original powers of mind and thought with distinguished work to their credit are wanted, it was obviously inexpedient to confine their choice to the limited personnel of a service. He recommended that for all such appointments the practice should be to secure men of achievement wherever found for the more important subjects of study and research, and that the State should offer them such reasonable terms as will be suitable in each case. He similarly condemned the policy of communal representation in the superior services.

Generally speaking, the principle which has commended itself to me, and which is in accord with practically unanimous opinion of representative Indians of all communities and provinces is, that it is as inadvisable as it is unsound and unnecessary to emphasise the question of communal or provincial representation in the superior services. The personnel required for these services must be possessed of the highest qualification available and any narrow contraction of the area of recruitment should be avoided.

These extracts from Sir Abdur Rahim's dissenting minute are sufficient illustrations of the admirable manner in which he put up a strenuous and vigorous fight single-handed against the influences of the bureaucracy and of the Britishers in India for the sake of the political and material advancement of India.

THE MUDDIMAN COMMITTEE

In his evidence before the Muddiman Committee, Sir Abdur Rahim stated the results of his experience as a Member of the Executive Council of a premier province :

As I have been a member of the Bengal Government from the commencement of the reformed regime, I propose to put down the results of my experience in my own words I venture also to assert that any step of a retrograde or reactionary tendency would

be in direct opposition to unanimous Indian opinion and gravely intensify political difficulties. There could be no doubt that the demand of Indian public opinion, as voiced by many of the influential, thoughtful and responsible exponents of such opinion, is for the immediate grant of an entirely autonomous and responsible government in the provinces and a considerable introduction of responsibility in the Central Government.

But unfortunately, Sir Abdur Rahim took the view that this large question was not within his purview or that of the Committee and added that even if it were, he should before supporting the demand wait until a genuine experiment has been made in responsible government for the life of two more councils in the transferred subjects. He wanted to see how far the electorates and their representatives were able to realise their responsibility when thrown entirely on their own resources. To that end, Sir Abdur Rahim suggested an immediate separation of the purse and a revision of the Meston Award. He recognised that the Government must reckon upon the possibility of there being always a party in the Council which would be impatient of the pace by which the British Parliament might regulate the development of responsible government in India and might even adopt measures of wholesale obstruction in order to achieve their object. But he was convinced, after a careful study of all that had happened and was happening, that if the Legislative Council were made genuinely responsible for the administration of the transferred subjects--on whose proper and adequate administration depends so largely the well-being and prosperity of the people--no party can for long persuade the people not to make the best use of the opportunity. Consequently, Sir Abdur Rahim proposed : (1) there should be a separate purse for the transferred departments with a separate financial secretary ; (2) the nominated and ex-officio members are not to vote on transferred

subjects ; (3) the interference of the Governor in the administration of the transferred subjects to be limited to cases in which he is of opinion that such interference is called for in the interest of law and order ; (4) all questions of policy relating to the transferred subjects should be settled by the Ministers themselves ; (5) special constituencies should be done away with ; (6) a greater devolution of responsibility to the local legislature and the local Government in provincial matters is necessary ; (7) and the Meston Award should be revised. These recommendations reveal two things : (1) Sir Abdur Rahim still retains his strong independence and judicial temperament in spite of his experiences as Member of the Executive Council. His Note reads more like a calm dispassionate judgment than a warm vehement advocacy of the cause of the progress of India towards Responsible Government. (2) Sir Abdur Rahim continues, as when he was a High Court Judge, to be out of touch with popular opinion and popular feeling and does not consequently make adequate allowances for such opinion and feeling in his suggestions for reform. This is a matter for regret. As he himself points out :

The present convention or etiquette which debars the Members of the Executive Council from all political activity in the country must be abandoned, for I am sure that if they adequately helped the Governor in the task of educating public opinion by explaining to the public every now and then the measures and policies of the Government, this will not only remove many misunderstandings but enable the people to realise the extent of co-operation that is possible between Europeans and Indians under the present system.

Such a course will at the same time educate leaders like Sir Abdur Rahim out of their aloofness and consequent misinterpretation of public opinion and will serve to render them useful exponents of public opinion to the

Government and stronger advocates of the Indian cause than they are at present.

Sir Abdur Rahim's recommendations were summarised in the Majority Report of the Muddiman Committee who follow his opinion that except by some form of dualism, it was not possible to afford an equally valuable training towards Responsible Government in India and still to safeguard those conditions on which Government depends. The Minority in its separate report merely noticed that Sir Abdur Rahim took a different view from Sir Surendra Nath Banerjea's and Sir P. C. Mitter's who said that "dyarchy should go as quickly as possible, not because it has been a failure everywhere but because public opinion apparently does not want it" and that "apart from the inherent defects of dyarchy", its failure to fulfil the expectations of the people had made it so unpopular that it could no longer be run as a democratic institution. The result of Sir Abdur Rahim's aloofness and dispassionate judgment apparent in his Note was that neither report accepted his recommendations which, however just and necessary from an absolute point of view, entirely ignored Indian sentiment and popular opinion.

AN ACTIVE POLITICAL LEADER

Sir Abdur Rahim is still an active political leader. By culture and judicial training, he is a leader of progressive but not extreme views in politics. He yields to none in his love of India. The communal spirit that marks some of his later speeches and writings is due largely to his anxiety to preserve and foster the best in Islamic culture and graft it with the Hindu culture in India. In his speech delivered at the Calcutta Madrasa in

March 1923, he sums up the features of Islamic culture in these words :

Islam not merely by the spirit of its teachings but by its laws and injunctions aims at human brotherhood and true democracy by recording as far as possible to each individual and people equal opportunities in life and equal rights of citizenship and not by taking away from the talented and the industrious to give to the stupid and the idle there is no Bolshevism in Islam. Private right and private property are not only fully recognised but are absolutely inviolable. Islam encourages, as no other system does, the growth and development of all peoples and classes of peoples to their fullest stature. No conflict is possible in Islam between capital and labour; both are equally free without any discrimination on ground of colour, race or creed. This is the corner-stone of Islam's economic laws and the facts of history amply testify to the soundness of their policy.

Again, presiding at the Muhammadan Educational Conference at Delhi, held during the Christmas week in 1926, Sir Abdur Rahim dwelt on the necessity of a common language for the entire Indian Mussalman population and on the feasibility of utilising Urdu for making use of Islamic spiritual forces and the great traditions of Muslim history and culture.

This emphasis on the preservation of Islamic culture was not laid by Sir Abdur Rahim at the cost of the Hindu-Muslim unity in India. In his message to the *Statesman* on the occasion of the Unity Day on 8th October 1924, he said :

No one who has the welfare of the millions of India at heart can withhold his appreciation of the way in which Mr. Gandhi, by means of self-imposed penances, has compelled his Hindu and Moslem followers to concentrate attention on the questions arising out of the highly unsatisfactory relations between the two communities. It is another happy augury for the growth of goodwill and charity in this land that Europeans should also have been invited to assist in this great task.

Again, in 1927, he made his views on Hindu-Muslim Unity clear by a special contribution to the Press; and he pleaded therein for a proper scheme of responsible

government as a remedy against communal clashes. In the course of his communication to the Press, he said :

The question that has to be asked is, whether when the people are vested with real responsibility and the best men among them, realise the great possibilities which would then open out before them and see a real chance of installing India when the proper time arrives among the great and powerful nations of the earth, will communal selfishness, exclusiveness and hatred disappear, will they then fully appreciate the need for free development of talent in each community and class so that their aim will no longer be to cripple and destroy any large section of their countrymen for the sake of some petty communal immediate gain or for avenging some past or present wrong, real or imaginary? This question cannot be answered without answering a further fundamental question, how far the present phenomenon is a mere outbreak of latent feeling of general animosity between the two communities, which must necessarily actuate one community when it sees an opportunity or finds itself in a position of advantage and power to ill-treat and oppress the other community, or is it due merely to a more or less accidental conflict of certain religions or civic observances and rights which the machinations of a class of politicians have been helping to spread all over the land. I am inclined to think that the latter is the case, for if we look to the history of India when the Muslims settled down in the country, we shall find that none of the wars were of a communal character. . . . This division of the population of India into distinct communities is the peculiar feature of Indian social life which undoubtedly has to be taken into consideration in framing a constitution so that they may all find opportunities and facilities for self-expression, and the minorities may be assured of effective protection. Surely, it is not beyond the wit of man to devise such a constitution for responsible government.

IN THE BENGAL COUNCIL

Sir Abdur Rahim was elected a member of the Bengal Legislative Council and was in January 1927 offered the place of a Minister on condition that he found a Hindu colleague. Failing to find one, he lost the offer. In March 1927, he resigned his seat in the Council as a protest against the Government attitude regarding the Barisal shooting affair.

Again in 1928 he abstained from voting on the Government motion regarding the Simon Commission and withdrew the amendment to that resolution. Explaining his

attitude to the Press, he pointed out that he intended to move a substantial proposition on a more favourable occasion, demanding Dominion Status for India and the abolition of diarchy in the provinces, the substantive resolution which he moved later in the year, though without success, was in these terms :

In order to secure a satisfactory and lasting solution of the political and constitutional problems that have arisen, it is the opinion of the Council :

(a) That the status of India should be that of a self-governing Dominion under the British Crown as an equal partner in the Commonwealth of Nations within the British Empire and the necessary steps be taken to give adequate expression and effect to such status in relations of self-governing Dominions within the British Empire and with the foreign countries ;

(b) That diarchy be abolished and full responsible Government be inaugurated in the provinces ;

(c) That the constitution of India be on the basis of a federation of autonomous states, the Central Government administering subjects concerning the whole of India ;

(d) That in lieu of the Meston Award, a fresh financial award be made ;

(e) That the citizens' rights be protected,

(f) That appropriate provisions be made for the proper and adequate representation of important sections in the Legislatures and other statutory self-governing bodies.

He explained to the Bengal Muslim Conference in 1930 how, in his view, any political progress of India towards responsible government would, instead of handicapping the Muslims, benefit them most. In the course of his address, he said :

India is as much the home and the only home of us, the Indian Mussalmans, as of our Hindu and other fellow-countrymen. India's political advancement and prosperity is as much, therefore, our concern and as near to our hearts as to those of her other citizens. It is our duty and privilege equally with the rest of India's population to serve India. When I lay before you the picture of what India may well expect to be under a free constitution, you will see at once that a radical change in the present system of government, while benefiting India as a whole, will benefit the

Mussalmans of India the most. You will, I am certain, agree with me that the constitution of the country should be so designed as to help the political and economic advancement of all of India's citizens, the Mussalmans no less than the Hindus, the Sikhs, the Parsis and the Indian Christians and remove once for all those causes of communal selfishness, distrust and jealousies, which are such a disquieting feature of the present situation, by calling for the whole-hearted service of the representatives of all communities in the great national task.

Need I tell those who argue that a self-governing India has no meaning for us without "safeguards" for our rights and interests, that in a self-governing India under a free constitution in which the people at large will control the government, the Mussalmans, far from being in danger of losing any rights, will be gaining along with others valuable rights which none possesses now. . . . I trust you will reject with scorn the advice of those who see nothing but bogeys and dangers lurking in every corner and never believe for one moment that seventy millions of Indian Mussalmans will go under, under a free constitution. On the other hand, I assure you that among the great leaders and rulers of future India, not a few will be Mussalmans enjoying the confidence and homage of all and not a few Hindu leaders will think of your interests as of their own community.

IN THE LEGISLATIVE ASSEMBLY

Sir Abdur Rahim at present represents the Muhammadan urban constituency of Calcutta and its suburbs in the Legislative Assembly of which he is an active member. He is the leader of the Independent Party in the Assembly and the Chairman of the General Purposes Committee. In both these capacities he has done very good work. Speaking on the Indian Press Bill at the Assembly sittings on the 16th of September 1931, he indicated the attitude of the Independent Party towards the Bill in clear language:

We are all at one in condemning crimes of violence, murders and murderous outrages, whatever be the motive which inspires the perpetrators. We are also agreed in denouncing such writings and speeches which may have the effect of inciting to these crimes of violence and assassination. Sir, I understand that the Bill is primarily and substantially designed, so far as the intention of the Government goes, to prevent incitements to such crimes by means of writings in newspapers and other publications of that nature. At the same time, Sir, it is evident that the scope of this Bill is far wider than that. It is not confined to the prevention of certain kinds of offences in this country. The very title, the very preamble

shows that what is desired, so far as this Bill is concerned, is to obtain control of the entire Press in the country. Now, Sir, I can say at once that we are not willing to give control over the Press to the Government, but we are perfectly willing to help the Government in devising suitable measures which will check, which will prevent assassinations and crimes of violence, even if their object may be to obtain a better political status for the country. So far we are agreeable to act with the Government, but we do not see any good reason why we should, especially at this juncture, help the Government in establishing control over the entire Press of the country.

He pointed out that the Bill, if passed, would hit the entire printing business of the country :

Sir, we all know how much modern civilization owes to the printing press, and is it really in the mind of the Government to handicap the business of printing in this country? Printing presses are not confined to printing newspapers or publishing newspapers, and they are not only useful but they are essential for the spread of civilization and knowledge. But what justification is there for telling any one who wants to start a printing press, whether big or small, that he shall not do it unless he deposits a certain amount of security? Now, that I submit is a provision in the Bill which cannot be justified.

Again, when the Indian Press (Emergency Powers) Bill came up for discussion before the Legislative Assembly on 1st October 1931, Sir Abdur Rahim, in supporting the amendment of Mr. Sitarama Raju that clause (3), the most obnoxious clause in the Bill be omitted, protested strongly against giving Government control over the printing presses in general in the following words :

The question I would ask the Treasury Benches to consider is this,—is a printing press a legitimate business or not? If it is, is the Government entitled or justified, or is it necessary for them to ask, before a legitimate business of this character is started, that the man who starts it must be prepared, if the Magistrate so wishes, to deposit a certain amount of security? Why do you not ask for security in the case of any other business? What is the reason then that in the case of printing presses only you should ask for security beforehand, or the Magistrate should have the power to ask for security? What is the reason? The only reason apparently, so far as one can guess, is this. There is a sort of presumption in the minds of the framers of the Bill that printing is a more or less dangerous business. Is that so? Is that the proposition that the Government want to support . . . that there is a possible danger to the public

if a printing press is started? Unless that proposition is supported, I submit to the House that this sub-clause cannot be justified at all. Not only a printer, but every man may be liable to offend against the law of the land. Why should the printers be singled out for security? One can well understand that if a printing press is printing matter which offends against clause 4, which offends against the object of this Bill, then in that case the Magistrate should have the power to call upon the keeper of that press to deposit security. But until that has happened, what justification is there for saying to a man who wants to start a business of printing, "No, you shall not be allowed to do that unless you deposit a certain amount of security." And, as has been pointed out, and very rightly pointed out, that will cripple printing business in this country a great deal.

There are a very large number of small printing presses in this country which will not be able to deposit any security at all. Why should you hamper such men at all? You can only do that if you really accept the proposition that printing is a dangerous business. Surely, it is not necessary for my Honourable friend the Home Member to go so far as that. Let him lay down that if there is any press which offends against the provisions of clause 4 that press will be called upon by the Magistrate to furnish security. But why should presses, which have not yet started or rather which have just been started, be called upon to furnish security? I submit that the Treasury Benches cannot justify this provision at all.

Again in opposing the passing of the Bill on the 3rd November 1931, he said :

I call it a double-faced measure because it professes to be one thing while its provisions are something very different. It professes in the title and preamble to be a Bill to control writings which incite to crimes of violence and murder; while, if you examine the provisions of the Bill, as we have examined it on this side of the House, you will find that it is perfectly clear that what the Government aim at and what they have secured is control of the entire Press of the country. Clause 3 gives them that control and the wide powers vested in the Executive Government emphasise that control. But that is not the title and preamble of the Bill. It is a deceptive measure and on that ground alone we are entitled to enter our emphatic protest against it.

Similarly unequivocal was his attitude as Leader of the Independent Party as regards the Foreign Relations Bill. His able exposition of the English Law on the question was an effective answer to the case made out by the Law Member, that there were corresponding provisions in the English Law and in the Law of the United States to justify

the introduction of the Indian Bill. With reference to the arguments of the Foreign Secretary to the Government of India in justification of the Bill that foreign relations are a reserved subject, Sir Abdur Rahim said :

My friend the Honourable the Foreign Secretary has said that foreign relations are a reserved subject. I do not know what he implied by that. The reasonable and proper implication of that is that if the legislature is precluded from controlling foreign relations of this country, then it is all the more reason why the public should be heard and given a chance.

Sir Abdur Rahim's severe opposition to the second Finance Bill introduced in the later part of the year 1931 is proof, if proof he required of the fearless fight for India's freedom that he has made all along. His exposition of the hollowness of the plea of the Government that the tariff on cotton would be a sort of protection for growers of cotton in India is particularly noteworthy in this connection. He pointed out in his speech on the 7th November that the problem that faced the Government of India was, how far and to what extent the budget could be balanced by retrenchment and to what extent the gap had to be filled by extra taxation. He expressed his firm conviction that the budget could be made up if not entirely, at least to a very large extent by retrenchment of expenditure of the Government of India both on the military and on the civil side, and that further the limits of taxable capacity have been reached and that all the really available resources of taxation have already been tapped. Again he pointed out on the 18th November :

What is the State public opinion in the country in this matter? There cannot be the slightest doubt that Indian public opinion is entirely against the scheme of further taxation. . . . The country as a whole cannot bear any further burdens, and it is necessary for all interests to combine and throw out proposals of this character. This habit of taxation seems to be growing on the Government from day to day and is an appetite which grows with the feeding; it is time that the Government put a stop to the tendency of piling

on taxation after taxation on the country. . . . We are told that we on this side of the House are too prone to criticise. I say it is our business to criticise the Government proposals and to guide them in the light of public opinion; that is the function which we have to perform, and to perform which we have been sent by our constituencies to this Assembly. If the Government's action was always right, if the Government were perfect, then in that case there was no necessity for the Government of India Act to provide for the election of Members by the country. Our function is to show to the Government that their proposals, their measures, their administrative acts in certain respects are not in accordance with public opinion or the needs of the country.

Sir Abdur Rahim referred in these words to the futility of the discussions in the Legislative Assembly and to the attitude that the Government of India took in regard to the vital matters of interest to the country :

Then, are our proposals accepted and carried out? No. In every matter to which Government attach any importance, if our proposals are against their policy, they have a very easy remedy,—certification. Bills can be passed by certification; financial measures can be passed by certification; Ordinances can be passed without consulting the Assembly.

Again, the position now is that it has been recommended so that the original Bill without any amendment should be passed by us. We all feel that such a course would be impossible for us to adopt. We should be defying public opinion if we lent our assistance to the original Bill being passed without the amendments which the House carried. It is not possible for us to go in the teeth of public opinion, about which there cannot be the least doubt. It is quite possible for the Government, constituted as it is, to override public opinion, to say to the public of India: "Our judgment is far superior to yours. Whatever the needs of the country may be, whatever the feelings of the country may be, we are the sole judges of the situation, and we are determined to act as we like." A course of conduct like that is not open to us on this side of the House. We all know that as regards some particular items there might be difference of opinion. But so far as the amendments that have been carried are concerned, we have a very large consensus of opinion, almost the entire elected opinion is with us except of course the British group. In those circumstances it is a very difficult position for us, who have always been willing to lend our best co-operation and assistance to Government in carrying out all legitimate and just measures, for we have to dissociate ourselves entirely from this proposal and take up the attitude that we shall not take any further part in the discussion. The decision having been taken, we have to stick to it, especially when the decision we have taken is entirely in accordance with the demands of the country. We do

not see that any good result will be achieved by taking any further part in these proceedings. We can talk as much as we like, but what is the good? We may criticise, we may point out what the real defects of the Bill are, but even though our criticisms may be just, they will have no effect whatever. The Bill will be passed. Sir, we have heard a great deal about unrealities and realities. Can there be anything more unreal than the position in which we are placed? A number of countrymen of ours are now sitting at the Round Table Conference in London. I would ask them, if my voice reaches there, to take note of the position and to devise measures by which a position like this can never be repeated again in this country. I do not think I can take up the time of the House usefully by adding any further words. I would ask the Government to reconsider their position. They will not reconsider their attitude so far as this Finance Bill is concerned. But they must reconsider the whole position as regards the relations between the Government and the people of this country. This state of things cannot last. We have been sent by millions of people to this Assembly in order to help the country, but we find ourselves entirely impotent to do so. We have not got the least power to effect any change in the situation so far as Government measures are concerned. We feel, Sir, in these circumstances that it is not possible for us to take any effective part in the further discussions of this Bill. This is the position, Sir, we are driven to take up by the Government. It is not our choice. They have decided it for us.

Sir Abdur Rahim has, it is hoped, still several years of active public life before him. His long and varied judicial experience, his assimilation of the best in Islamic thought and culture, his stern and vigorous opposition to Bureaucratic intolerance, his sane views on the Hindu-Muslim problems and his acknowledged position as leader of the Indian Moslems,—all these combine to ensure his taking a prominent and decisive part in the shaping of the future constitution of India.

SIR SHADI LAL

BORN in a family which, like the families of yore, though very respectable and boasted of ancient renown and high pedigree, had not so far taken to English learning, Sir Shadi Lal succeeded in reaching the furthest goal of modern education by dint of his own unaided powers and talents—a fact that sheds lustre on his genius.

Sir Shadi Lal comes of a respectable Aggarwal family known as the "Chajjuramwalias". He was born on the 12th of May 1874, at Rewari which is the headquarter town of a *Tehsil* (or Sub-division) in the district of Gurgaon (Punjab) situated on the main line of the Bombay Baroda and Central India Railway running between Delhi and Bombay *via* Alwar and Baroda. The Aggarwals are generally believed to be Vaishes who form the leading commercial community of India, but it was suggested by Pandit (now Raja) Hari Kishen Kaul in his Census Report of 1912 that the custom of worshiping arms and a horse on the Dassehra day prevalent among the members of this caste, and the notable fact that they worship their *Bahis* (account books) on the Dassehra instead of the Dewali, like the purely trading classes (*e.g.*, the Marwari and the Bhatias of Bombay) are a strong indication of their Khshatriya origin.

At school, he was modest and unassuming, but his modesty was tempered with self-reliance and a firm belief in himself—a rare combination. Needless to say that he always headed the list when the examination results were out. He passed the Matriculation Examination of the Punjab University in 1890 from that school, winning the



NANABHAI HARIDAS

Government and Gubbins scholarships. He joined the Forman Christian College, Lahore, and passed the Intermediate Examination in 1892, again winning the Government scholarships. He joined the Government College, Lahore, taking English, Physics and Chemistry as his subjects for the B. A. Examination which he passed in 1894. He stood first in the whole Province and obtained the Government scholarship of Rs. 25 and the Fuller Exhibition of Rs. 35 per month. He took his M. A. Degree in 1895 in Physics from the Government College, Lahore. He succeeded in winning the Government of India Scholarship for the prosecution of further studies in England. There he joined the University of Oxford and was admitted to the Balliol College. His rapidly successful career was a wonder to English people. He earned the much-coveted Boden Scholarship in 1896 and took honours both in the B. A. and B. C. L. examinations of that University. He obtained the Arden Scholarship at Gray's Inn. He was also an Honours man of the Council of Legal Education, Special Prizeman of the Council of Legal Education for the best examination on Constitutional Law, Constitutional History and Legal History as well as the Special Prizeman of Gray's Inn. These honours and distinctions made him the cynosure of all eyes in England.

On the 14th June 1899, he was called to the Bar as a member of the Honorable Society of Gray's Inn and was duly enrolled as an advocate of the Punjab Chief Court. He was appointed a lecturer in the Law College and for some time acted as its Principal. His lecture notes were published in the form of commentaries on the Punjab Alienation of Land and Pre-Emption Acts. His masterly criticism of the defects which had crept into those legislative enactments compelled the Legislature to take

steps for their removal. In fact, it resulted in the passing of a new Pre-Emption Act in 1913 which was aimed at removing the defects pointed out by him. In his speech in introducing the new measure, Mr. Tollinton, the Member in charge of the Bill, said :

The Hon'ble Mr. Shadi Lal had, in 1905, published a commentary in which a great deal of most useful criticism appeared, and, in 1908, he recorded a note of the more urgent steps that were required to place the law relating to pre-emption on a satisfactory footing. Not only did Mr. Shadi Lal point out some 25 minor inaccuracies and ambiguities in the Act, but he showed in particular that the definition of "Agricultural Land" was inaccurate, that it was anomalous to exempt temples and shops in towns and not in villages, that the action taken by Government under Section 7 (2) of the Act excluding areas from pre-emption was probably illegal, that the proviso to section 11 which was meant to protect the statutory agriculturist was unnecessary as the statutory agriculturist had ceased to exist.

Sir Shadi Lal's reputation as a writer rests upon his commentaries on the Punjab Alienation of Land Act of 1900, and the Punjab Pre-Emption Act of 1905. It is a matter for regret that both these books deal with Acts of the Local Legislature and are therefore not so well known outside the Province as they are within the Punjab. A second edition of both the books was called for within 2 years of their first publication and the criticisms levelled by the young lawyer (as he then was) against some of the provisions of the Punjab Pre-Emption Act of 1905 were justified when in 1913 the Local Legislature amended the Old Act and passed a new one. It is interesting to note that when the Act of 1913 was on the anvil, Sir Shadi Lal was himself a member of the Legislative Council and sat on the Select Committee which considered the Draft Bill. His Lordship signed the report of the Select Committee subject to a Note of Dissent saying that in his opinion agricultural lands within the limits of a town should not be subject to pre-emption. The view put forward by Sir

Shadi Lal then has not yet been accepted by the Legislature but it has found support among many eminent Judges including Mr. Justice Le Rossignol who has expressed the opinion that the enforcement of pre-emption in the towns, at any rate, is an anachronism.

PUBLIC LIFE

Shadi Lal's unassuming and modest nature made him retire into secluded life, but public honours soon sought him out. In 1907, he presided over the meeting at which an address was presented to Mr. Gokhale by the Lahore students. Throughout his public life, all his speeches and activities were on the side of moderation and reconciliation; he strove hard to bring about a harmonious co-operation between the official and non-official circles. His activities and public utterances were free from racial and religious bias and sectarian narrow-mindedness. As we have said above, sectarianism and bigotry are revolting to the nature of such high souls.

Shadi Lal was nominated a fellow of the Punjab University in 1902 and elected a member of the Syndicate in 1904. When the Morley-Minto reforms were introduced, Sir Shadi Lal was returned by the University constituency as a member of the first reformed Legislative Council of the Province which sat from 1910 to 1912 defeating both Sir (then Mr.) Mohd. Shafi and Sir (then Mr.) Fazl-i Hussain. Rai Bahadur Shadi Lal (as he then was) did extremely valuable work as a member of the Council not only for the University but also in the cause of Judicial Reform. He thus advocated the substitution of the present District Judges for the old style Divisional Judges, the separation of the Civil and Criminal powers of judicial officers, the appointment of Subordinate Judges from among the members of the Bar, and the grant of first Class Travelling

Allowance to all the members of the Punjab Civil Service. His Lordship's speeches in the Council were always marked by a mastery of facts and a high debating power coupled with a self-restraint which won the admiration of all the officials and non-officials alike. The following passage from one of his speeches explains the view which he took of his own duties as a non-official member of the Council. "No sensible person would suggest for a moment that the non-official members should constitute themselves into a standing opposition to the Government or bring forward measures to put difficulties in its way. But it is the duty of the non-official members to represent the grievances of the people, to suggest means of redressing them, and to press for reform in the administration."

It is interesting to note that at all the Budget meetings Rai Bahadur Shadi Lal persistently advocated the raising of the Punjab Chief Court to the status of a High Court and it is a lucky coincidence that when at last the Lahore High Court did come into existence, Sir Shadi Lal became its first Chief Justice.

His abilities as a debater shone with the brightest lustre at the Punjab Municipal Bill discussion in 1911. Single-handed, he fought the battle of local self-government when he was forsaken even by the representatives of local bodies. He wrote "his solitary note of dissent which, by its weight of argument and clear enunciation of principles, shone out amid the mass of reactionary documents surrounding it". He pointed out the illiberal and retrograde provisions of the new measure.

In matters relating to Legislature, Mr. Shadi Lal strongly opposed the policy of ousting the jurisdiction of Civil Courts in favour of that of the Revenue Courts.

AS AN ADVOCATE

As an Advocate, his keen legal insight, cool but forceful arguments and deep analytical powers often carried the day. A competent critic has compared him with Sir John Simon in the course of an appreciation in the *Tribune*:

Their academic career had been extraordinarily remarkable. Mr. Justice Shadi Lal won the Punjab Government State Scholarship for the prosecution of his studies in England, won prizes at Oxford, got prizes and honours at the Bar, Sir John Simon got prizes at Oxford and at the Bar, and on the top of all, he won the prizes of the Parliament. As soon as they started their professional career, they came to the top with electric rapidity. How admirable a counsel for the defence Sir John Simon has proved himself from the now distant days to the present is part of history of the modern English Bar. How clever a counsel for the defence Mr. Justice Shadi Lal has proved himself from the now distant days to the Rani Case of 1911 is part of the history of the Punjab Chief Court. Both have received record fees and made a vast sum of money at the Bar. Mr. Justice Shadi Lal received the record fee of (I need not commit myself) in the Rani case. I watched Mr. Shadi Lal when he presided at a meeting at which an address was presented to the late Mr. G. K. Gokhale by the Lahore College students when he visited the Punjab in February 1907. I have heard Mr. Shadi Lal speak in the Punjab Chief Court many a time and oft. The chief thing which has always struck me about him is that he is a particularly cool lawyer, and, to the last, retains his complete self-possession. Only once I have heard Sir John Simon speak. And the moment I heard him speak, he at once reminded me of Mr. Justice Shadi Lal. As speakers, they remarkably resemble each other. The majority of lawyer politicians and lawyers rely largely upon rhetoric and histrionic effects. They display a certain amount of love for rhetoric. But Sir John Simon and Mr. Justice Shadi Lal are absolutely free from that. On the contrary, they display a disdainful contempt of rhetorical device. They appeal always to the mind. They love argument rather than entertainment or rhetoric. The fact is that both of them are perfectly undemonstrative and unshowy, and rely absolutely upon the facts. They never advertise their goods, knowing full well that the quality of their goods will itself appeal to the Judge and the audience. They do not believe in advertisement or in dressing windows. They believe in the quality of their goods. Their view is that if the goods are all right, there should be no need for advertisement or for dressing windows. When they speak, they speak to convince the Judge or the hearers, as the case may be, never to stampede them. And it is because of the said fact that they are not orators. A good many lawyers are

given to brow-beating tactics. But the methods of Sir John Simon and Mr. Justice Shadi Lal are quite different from the brow-beating tactics of modern lawyers. They can cross-examine an extremely hostile witness with stately courtesy, though with deadly effect. They both possess an urbanity of manner which makes their presence and address most pleasing. They never strike an obviously hostile witness in the back. They have the gentle tact of patting him on the back. It is very seldom that they strike him in the back. But if they do, they at once pick him up with their sweet smile. The beauty about these two famous lawyers is that they do not suffer from defects incident to their profession. Every professional man, be he schoolmaster, journalist, doctor or lawyer, naturally suffers from defects incident to his profession. But these two lawyers are free from them. When at the age of thirty-seven Sir John Simon became Solicitor-General, there was hardly any paper, Liberal or Conservative, which did not approve of his appointment. On the contrary, they all agreed that he was the man to be appointed to the post, although he was so young for the post. While less than forty, Mr. Justice Shadi Lal became Judge of the Chief Court, Punjab, and not a single paper in India commented adversely on the appointment of so young a man to so great an office. In fact, all the papers, Indian as well as Anglo-Indian, agreed that there was and could be no other appointment which was thinkable.

As an Advocate, Sir Shadi Lal always relied more on reasons and authority than on mere rhetoric, though he is a fluent and effective speaker. The most sensational case conducted by Sir Shadi Lal was perhaps the one in which he saved Rani Bhagwan Kaur from the gallows in 1911. It was a notable feature of the defence case that Sir Shadi Lal provided the Court with a "very carefully prepared wooden model of the whole premises (where the scene of occurrence was laid) made accurately to the scale of four feet to an inch, and constructed so that each story of the main building could be taken off to show the exact position of the various rooms, passages and staircases concerned".

AS A JUDGE

It is on the Bench that his legal attainments and wide range of intellectual powers have had full scope. On the judicial side, his judgments are monuments of legal

learning that deal out impartial justice to all the subjects of His Majesty, high and low alike. They have always commanded respect both in and out of the Province. His legal acumen, keen insight, power to grasp and probe the most complicated points of law, great analytical faculties and lucidity of expression make his judgments models of judicial pronouncements and inspire confidence and esteem in the public mind.

It is impossible within the short space at our disposal to offer anything like an adequate selection of Sir Shadi Lal's judicial pronouncements but we will mention just a few in order to illustrate the mind and methods of the man.

Sir Shadi Lal presided over the well known Full Bench (consisting of himself, Justice Broadway and Abdul Raof) which expounded the rule that "where an unregistered document, the execution of which is admitted or proved, contains an admission of the payment of the consideration, the onus lies on the person executing the document to prove that what he himself admitted to be true was, as a matter of fact, false and that he did not receive the consideration". (*6 Lahore 470.*)

The point is obvious enough but for nearly 40 years the Punjab Courts had not recognised this simple principle.

A Bench consisting of Sir Shadi Lal and Mr. Justice le Rossignol (*6 Lahore 548*) explained the law that it is for the decree-holder to decide whether he should execute a decree for the payment of money by the arrest of the judgment-debtor or by the attachment and sale of his property or by both.

There was an old ruling before this judgment which laid down that the person of a judgment-debtor could not be touched until his property had been exhausted and this



SIR SHADI LAL

had greatly hampered the Subordinate Courts in their difficult but often thankless task of executing the decrees passed by them.

In *1 Lahore 192*, Sir Shadi Lal as the member of a Full Bench wrote the leading judgment settling a much vexed question as to the respective powers of a Civil Court and the Collector in proceedings under Section 72 of the Civil Procedure Code. His Lordship laid down that the Collector in such cases acts only as an "Officer of the Court" and that it is for the Court to accept or reject the proposals made by him.

In the case reported as *4 Lahore 271*, His Lordship was the member of a Special Bench which dealt with the case of certain lawyers who had been convicted in connection with their activities about the picketing of liquor shops during the height of the non-co-operation movement. His Lordship held that the action of the lawyers had brought them within the disciplinary powers of the High Court, but that, as among other things "the object aimed at by them was to promote the cause of total abstinence or temperance, an object which pursued in a lawful manner is not only a perfectly legitimate but a laudable one, I would take no action against them other than giving them a warning".

Sir Shadi Lal was also the member of a Special Bench convened under Section 18 of the Indian Press Act (*3 Lahore 405*) in which His Lordship pointed out that certain police officers mentioned in a newspaper article could not either individually or collectively be regarded as "the Government established by law in British India".

We shall note another ruling of His Lordship in which (*6 Lahore 34*) he criticized the new procedure prescribed for initiating prosecutions for perjury, etc., that

is, for offences connected with the administration of justice. The Court before which the offence is committed, is now required to take up the role of the complainant instead of, as hitherto, being allowed merely to grant sanction to the person concerned to prosecute the guilty person. His Lordship truly remarked that "it is hardly consistent with the dignity of a High Court Judge" (and we may humbly add, of any other Judge or Magistrate) that he should have to sign the complaint and be treated as a complainant. We hope the Legislature will realize the necessity for amending the law.

In the case of *Sulshan v. Emperor* (I. L. R. 10 Lahore 283) he examined at length the law of admissibility of confessions under Section 27 Indian Evidence Act and compared the provisions of the English law on the point. He held that the whole of an inadmissible statement to the Police should not be admitted if the inadmissible portion of the statement is not separable from the statement which may be admissible as explaining the discovery of facts. He points out:

The consensus of judicial opinion is however in favour of the view that the section allows only so much of the information as leads directly and immediately to the discovery of a fact; but that the portion of the information which merely explains the material thing discovered cannot be proved. This rule is not only warranted by the language of the section which embodying, as it does, an exception to the general rule against the admissibility of confessions, must receive a strict construction, but also conforms a principle upon which the exception is founded.

Delivering the leading judgment in the Full Bench case of *Devi Ditta Mal v. Secretary of State*, (I.L.R., 7 Lahore 238) where the question was 'whether a notice served on the Traffic Manager claims, is sufficient compliance with the provisions of Sections 77 and 110 of the Indian Railways Act and therefore equivalent to a notice to the Railway administration.'

Sir Shadi Lal answered the question in the affirmative and remarked :

Before concluding, I consider it necessary to point out that the law on the subject is in a very unsatisfactory condition. The High Courts have expressed divergent views on the question referred to us, and in view of the uncertainty created by the case law and aggravated by the rules framed on the subject by several railways, the public are entitled to know, and the Legislature should consider it its duty to make it clear, all possible doubt whether they should address their demand to the Traffic Manager or to the Agent direct.

Another notable decision of the Lahore Full Bench is *Khan Gul v. Lakha Singh* (I. L. R. 9 Lahore 701) where the Chief Justice considered at length the decisions on the vexed question how far a minor is liable on his false representations as to his age to a person who on the faith of such representation enters into a contract with him. His judgment embodies a masterly analysis of the legal principles which ought to guide the decisions in such cases.

Sir Shadi Lal had very high conceptions of the powers of the ordinary Courts. In *Ali Muhammad v. Hakim F. B.* (I. L. R. 9 Lahore 504) he referred to these powers as follows.

The Court must, no doubt, give effect to the language of the statute, which, either by express words or by plain and necessary implication, takes away the jurisdiction of the ordinary Courts. But it is a well established doctrine that a statute interfering with the established law must receive a strict construction, and that, when its language is doubtful, the Courts should lean against an ouster of jurisdiction of the ordinary tribunals.

His zeal in maintaining the reputation of the Courts of Justice is seen in *Taj Mohammad v. Emperor* (I. L. R. 9 Lahore 522.)

It is incontrovertible that one of the most important duties of a Court of Law is to create and maintain confidence in the administration of justice and to conduct itself in such a manner as to produce in the minds of the parties an impression that nothing but absolute justice would be done to them.

In the same case, he protested against the magistrate's unjudicial conduct in these terms :

It is a matter for surprise that a judicial officer occupying the position of a District Magistrate does not see the impropriety of holding private conferences with the prosecuting officers in respect of a criminal case upon which he had to adjudicate. The practice followed by him offends against the elementary principles governing the administration of criminal justice ; The proceedings taken by the Magistrate show that he did not hear the case with that judicial detachment which should characterize the trial of a criminal case and that he allowed his executive zeal to outrun his judicial discretion.

The above case furnishes one more proof of the desirability of the separation of judicial and executive functions of the magistracy in India.

Sir Shadi Lal is responsible for many important decisions on Criminal Law and procedure and evidence. In *Mohammad v. Emperor* (I. L. R. 9 Lahore 408) he refers to the exceptions under Section 32 Evidence Act to the general rule of the law of evidence that witnesses should depose to the facts within their own knowledge and not to those which they have only heard stated by other persons. He points out that the scope of that section is wider than the English law, extending as it does, the scope of the exception and putting a penal interest on the same footing as a pecuniary, or proprietary interest. Then referring to the extent of admissibility he says :

The statement is admissible as evidence, not only of the precise fact which is against interest, but of all matters involved in or knit up with the statement. But disconnected facts, even though contained in the same document or statement, are inadmissible.

He explains, in *Bikha Ram v. Emperor* (I. L. R. 7 Lahore 80) the intention of the Legislature in enacting Section 489 B. I. P. C. thus :

It appears that the object of the Legislature in enacting this section was to stop the circulation of forged notes by punishing all persons who knowing or having reason to believe them to be

forged, to any act which would lead to their circulation. Judged by this test, the sale of a forged note as a forged note is as reprehensible as a sale of a forged note as a genuine one. A person, who purchases for value a forged note knowing it to be forged, is ordinarily expected to make money out of the transaction by circulating the note as a genuine one.

In *Jaimal v. Emperor* (A. I. R. 1927 Lahore 147) he explains what in Criminal Law will amount to 'attempt.'

It is no doubt difficult to frame an exact definition of the word "attempt" but it has been pointed out in a Bombay case that an attempt is an intentional preparatory action which fails in object--which so fails through circumstances independent of the person who seeks its accomplishment. In other words, when a man does an intentional act with a view to attain a certain end and fails in his object through circumstances independent of his own will, then that man has attempted to effect the object at which he aimed.

In *Nura v. Emperor* [(A. I. R. 1926 Lahore 149) he discusses what a 'public place' is :

Now a place which is in any way dedicated to the use of the public is of course a public place; but where it is owned privately and no such dedication has taken place, the question whether it is a public place depends on the character of the place itself and the use actually made of it. As pointed out by Grove, J., in *Reg v. Wellard* a public place is a place where the public go, no matter whether they have a right to go or not.

A perusal of these and other judgments of Sir Shadi Lal shows that they are marked by a depth of learning combined with knowledge and understanding of life; a power of exposition combined with an economy of words, an independence of mind, and an anxiety to do justice without fear or favour.

For years he had been the Judge deciding commercial causes and his contribution to the elucidation of this most important branch of law is freely acknowledged by all competent persons.

THE PUNJAB JUDICIARY

It must be a matter of deep satisfaction to Sir Shadi Lal that as the Chief Justice of the Province, His

Lordship has been able to carry into effect some of the reforms which he used to advocate as a member of the Legislative Council. The possession of a degree in Law has now been made compulsory for candidates seeking admission into the judicial branch of the service.

The period of Sir Shadi Lal's charge of the Judicial Department will in fact always be known as *era of reform*. There has been a marked improvement not only in the personnel of the judiciary but also in the general working of the judicial machinery.

The comprehensive rules and forms framed by the Chief Court under Section 248 of the Indian Companies Act, 1913, for the winding up of companies in liquidation are all his compilation. On the administrative side, the far-reaching reforms made by him as Chief Justice from time to time have thoroughly overhauled the system of administration of justice and have purged the judicial machinery of all the defects, drawbacks and delays that clogged the free movements of the different parts and retarded justice. By keeping a vigilant eye on the subordinate courts, punishing those who were found wanting in any way and rewarding within legal limits those who kept pace with his reforms, he has succeeded to a great extent in stamping out corruption and other evil practices. This no doubt brought his policy into conflict with the old forces of reaction whose interests were in jeopardy. But strength of character and force of conviction that have borne him out through many a storm stood by him now and helped him in steering clear of the rocks. The reforms and improvements that have been made and carried out in his regime have been freely acknowledged by the Civil Justice Committee, 1924-25, in their report,

and I cannot but quote from it. This is from Chapter 56 of that report :

Under the old system, officers who tried civil suits were not recruited from the members of the legal profession and were not possessed necessarily of even a rudimentary knowledge of civil law when they entered on their duties. They were expected to pick up their knowledge of law as they went on. Even when some specialization was insisted on, selection was apt to ignore as a requisite an acquaintance with judicial duties, and appointments were frequently made of members of the ministerial staff. All this has been changed now and, at present, only graduates, for preference, practising lawyers, are appointed Subordinate Judges . . . Supervision (by the High Court) is reasonably good.

There can be no more eloquent testimony to the great and meritorious work done by Sir Shadi Lal than the following paragraph which is taken from the same report :

We are very much struck by the very marked improvement that has taken place in the work of this province in the last few years. The supervision exercised by the High Court has been increasing in efficiency and has now attained a very high standard. For this reason we are disposed to be hopeful as to the result in future. The Punjab is a province in which we can leave with confidence improvement in methods to the present officers.

In the introduction of reforms, a close attention to details has been his chief characteristic. The reforms and improvements effected by him fall into three groups :

(a) Those aimed at the efficiency of the officers who tried the civil suits ;

(b) Those intended to remove the defects in the procedure of the trial of suits ; and

(c) Those providing facilities to the litigant public and redressing their legitimate grievances.

The short space at our disposal permits only a passing glance at the above-named series of reforms.

(1) Formerly the Munsiffs, the lowest rung in the judicial ladder, were recruited either from the clerical establishment or by selection from among the inexperienced youths just fresh from their studies. The former carried

with them all the vices that are incidental to low origin and scanty education, the result was a general corruption—a point noticed by the Civil Justice Committee; the latter learnt law and procedure as they went on at the expense of the litigant public; their blunders supplied rich material for the jokes of the Bar in their leisure moments not a happy spectacle for the dignity of the judicial chair. All this has been changed now. The status and pay of the Munsiffs have been raised; they are sub-judges and gazetted officers drawing a handsome salary; and are recruited from among the practising lawyers and law graduates. This has considerably increased the standard of efficiency. Then the system of yearly inspection of the Subordinate Courts by a Judge of the High Court gives a healthy tone to the whole administration. Sir Shadi Lal has not forgotten the bailiffs and the process-servers; their pay has been increased and a higher standard of education is prescribed as a condition precedent to their appointment.

(2) Here we meet with a long list of reforms, because the evils that were to be removed were many and deep-seated. The judicial officers are required to see that no adjournments are granted on flimsy pretexts, that all witnesses that attend a hearing are examined and none are sent away on lame excuses, that the trial of a civil case must go on from day to day until all the witnesses have been examined, that special dates should be given for filing the list of witnesses to be summoned and paying the diet-money so that no excuse could be taken hold of for applying for an adjournment and that the Civil Procedure Code should be followed in all the details. Sir Shadi Lal has not contented himself with mere orders; he sees that the instructions

are followed to the very letter. The annual inspections make this possible, and many officers had to get into the scheme or risk their yearly increments. The lesson thus learnt is never forgotten.

(3) Here we meet with that attention to details that are characteristic of Sir Shadi Lal. The litigants must be given date-slips by the Presiding Officer himself before their departure, their applications that are merely formal should not be dismissed in default, the Presiding Officers are made responsible to see that the litigant public is not harassed by their Ahlmads and Readers and that they are not kept waiting unnecessarily.

The dignity of the position of the judicial officers is greatly enhanced, at the same time corruption is rooted out with a firm hand. The promotions in the establishment staff are made dependent upon efficiency, but seniority is first given a trial. Sir Shadi Lal has a due regard for communal representation in the service, but an incapable man is not promoted over the head of a qualified man. Here again his policy comes into conflict with interests affected adversely by it. But Sir Shadi Lal is a strong man and no threats of any kind can move him from his high resolve.

Sir Shadi Lal with his practical knowledge of the Courts realized that justice delayed is justice denied and in his time very strong and effective instructions have been issued for the expeditious disposal of all judicial work. It is thus insisted upon now that cases must be heard from day to day, that the service of processes must be checked more carefully and that in all Civil Suits the production of documents must be made at the earliest possible stage according to law. These were all fruitful causes of delay in the olden days and are now gradually disappearing.

The Lahore High Court has also attempted to remedy the evil pointed out by the Privy Council in its famous judgment in which their Lordships observed that the troubles of a decree-holder in India really begin after he has got a decree and when he proceeds to realize it.

The work done by Sir Shadi Lal on the administrative side elicited the praise of no less an august and authoritative body than the Civil Justice Committee which remarked in its report: "We are very much struck by the improvement that has taken place in the work of this Province (Punjab) in the last few years. The supervision exercised by the High Court has been increasing in efficiency and has now attained a very high standard."

AS CHIEF JUSTICE

In May 1920, he was appointed to the exalted office of the Chief Justice of the new High Court at Lahore. The unique and conclusive proof of his impartial justice, broad-minded toleration and popularity is afforded by the fact that both when he was elevated to the Bench in 1913 as a puisne Judge and also when he was appointed as Chief Justice in 1920, the whole of India united to hail his appointment with great satisfaction and joy and hastened to congratulate the Government on their selection. Here at least we had the much desired unity. All sections of political bodies in India with all their numerous differences and divergencies unanimously held him to be the most suitable man to occupy this high position; the *C. & M. Gazette* had nothing but praises for him:

Mr. Justice Shadi Lal's eminence as a lawyer has long been recognised and his intimate knowledge of the Customary Law of the Province makes it peculiarly suitable that he should succeed so recognised an authority on the subject as Sir Henry Rattigan. In the esteem and respect that he enjoys no less from the Bar than from his colleagues on the Bench, Mr. Shadi Lal will find, we do not doubt, full and ready support.

Many and thoroughly representative were the meetings which had been convened to pass the resolutions of great confidence in Mr. Justice Shadi Lal and to urge the Government to select him as the Chief Justice, and when the Government acceded to the desire so universally and unanimously expressed, they all hastened to congratulate the authorities on their selection. This speaks volumes for his popularity, impartiality and broad-minded toleration.

It is a well known fact that it is the Chief more than anyone else in the High Court who is responsible for all the improvements which have taken place, because every detail of the administration receives his direct, close and personal attention. When Mr. Justice Broadway appeared as a witness before the Civil Justice Committee, he was questioned as to who was responsible in the High Court for supervising the work of the Subordinate Judiciary throughout the Province and he told the Committee that it was the Chief Justice himself. The Committee expressed a surprise as to how the Chief could find so much time for all his work but the reply vouchsaged was that: "He does!" Sir Shadi Lal is really a man of inexhaustible energy.

In 1925, when Lord Reading went out to England to confer with the Secretary of State, Sir Shadi Lal, as the Chief Justice of the Lahore High Court, had the signal honour of administering the oath of office to Lord Lytton, the Officiating Viceroy and Governor-General of India at Delhi.

In the summer of 1927, Sir Shadi Lal went to England for the benefit of his health and when he came back he found the Punjab (to quote a newspaper report) "more torn and distracted than when he left it". The Press of the Province welcomed him and expressed confidence

in His Lordship's ability "to guide events in the quiet but powerful manner which one has come to expect from the Chief Justice" in situations of difficulties.

SIR SHADI LAL'S DISTINCTION

"There are three spheres," said Lord Birkenhead, in which a Lawyer may earn a reputation: as an Advocate, as a Writer, or as a Judge." Sir Shadi Lal has distinguished himself in all these three spheres.

His Lordship's success as an Advocate may be gathered from the fact that within about a dozen years of his enrolment he pushed himself into the front line and was picked up for the Bench. The frequency with which his name appears in the Law reports of the time also furnishes a clear indication of the rapidity with which he climbed up the steps of the ladder in his profession. His early appointment to the Bench reminds one of "Judge" Jeffreys who became Chief Justice of the Court of King's Bench at the unprecedently early age of 35 years. It is of course impossible to carry on the comparison any further between Sir Shadi Lal, perhaps the most popular judge of his time, and that most detested of all English Judges, "Judge" Jeffreys of the Bloody Assizes, to whom the title of a "Judge" is now conceded only grudgingly, and that merely in deference to an undisputed historical fact. Sir Shadi Lal is indeed popular. It has been said that "a popular Judge is an odious and pernicious character", and that popularity which is a virtue in the politicians is a vice in the Judges: if that be so, the case of Sir Shadi Lal furnishes a strong and striking exception to the rule thus propounded. His Lordship has maintained his dignity and impartiality on the Bench and at the same time gained popularity with all manner of men who have come into contact with him. This is truly a wonderful achievement

in an age of communal strife like the present, and that in a province like the Punjab where communalism is more rife than anywhere in the rest of India.

The success of Sir Shadi Lal as a Judge may be gauged from the fact that in a ranking list of the ten best Judges in India issued by him recently, Col. Roe, of the Punjab Commission, has given His Lordship second place in the whole of India next only to Sir George Rankin, the Chief Justice of Bengal. This is a very high compliment indeed when we remember that there are no less than six High Courts in this country. The only other Indian name included in the list is that of Sir Basanta Mallick of the Patna High Court. It would be interesting to note that in drawing up this list, Col. Roe has stated that he took into consideration "the soundness of Law, lucidity of expression, courtesy of phraseology to the Court whose judgment is under appeal and general common sense".

Indeed the life and career of Sir Shadi Lal up to date may be summed up as that of a brilliant scholar, an able and successful lawyer, a learned and lucid commentator, a careful and cautious legislator, a sound and judicial Judge, and a capable administrator of the judicial department.

THE INDIAN REVIEW

THE *Indian Review* is an All-India Monthly Magazine which caters to the needs of all educated Indians. It circulates all over India (including the States) Burma, Ceylon, the Straits Settlements and the Far East. Amongst its Subscribers are Government Officials, Merchant Princes, Maharajahs, Ruling chiefs, the landed aristocracy of India, Advocates, Doctors, Engineers, Educationists and a large number of the *Intelligentsia* of the country. There is hardly a club, library or an educational institution which does not subscribe to the *Indian Review*. The *Indian Review* is a busyman's monthly and is an excellent medium of advertisement in India and the East.

Single Copy Price As. 8.

Annual Subscription.

Indian:

Rupees Five
if by cheque Rs. 5.4.

Foreign:

Great Britain 12 sh.
America 3 dollars.

Copies of the *Indian Review* can be had, of all important news agents in India, Burma, Ceylon and the Straits Settlements as also at the Railway Book Stalls of Wheelers in Western and Northern India and of Higginbothams in Southern India.

A CYCLOPAEDIA OF INDIA

You have in these volumes of the *Indian Review* from 1900 a copious and entertaining record of the history of the last two and thirty years contributed by a host of writers, European and Indian, Scholars, officials and non-officials, politicians, reformers and men of letters.

A Veritable Cyclopaedia of India.

Useful for all Libraries, Educational and Public Institutions:

THE INDIAN REVIEW

BOUND ANNUAL VOLUMES
for the following years.

1902	1908	1913	1918	1923	1928
1903	1909	1914	1919	1924	1929
1905	1910	1915	1920	1925	1930
1906	1911	1916	1931	1926	and
1907	1912	1917	1922	1927	1931

• RUPEES EIGHT PER VOLUME

A few back volumes neatly bound in calico with index for the above-mentioned years are available. Orders should be accompanied with an advance of Rs. 10.

G. A. NATESAN & CO., PUBLISHERS, G. T., MADRAS.

SPECIAL FEATURES
OF
THE INDIAN REVIEW

THE *Indian Review* serves as a link between the mother country and Indians scattered in different parts of the world. The condition of Indians in East and South Africa, in Canada, Australia and the U.S.A., in Fiji, Trinidad, Burma, Ceylon, the Straits Settlements, and Malaya, and in other countries, their grievances and aspirations are set forth and reviewed periodically in these pages. There is also a chronicle of events in the various *Indian States*.

ANOTHE striking feature is *The World of Books*—a section in which are reviewed a number of current books in English, published in India, England and America. The reviewing is done by competent writers and specialists.

EST another feature is *Topics from Periodicals* wherein we have a summary of the more important articles appearing in contemporary Indian, English and American periodicals. The various other sections under suitable heads with notes and criticisms of current affairs and the illustrations which invariably accompany them, are other attractive features of the *Review*.

THE *Indian Review* is a monthly magazine of varied and stimulating literature. Its list of contributors includes many well-known writers in England and India and specialists in arts and sciences. Politicians, Public Servants, Lawyers, Doctors, Professors, Businessmen, Journalists—all contribute to its invigorating pages. Besides original articles the *Review* contains each month “The cream of the world’s literature.”

IF you have never subscribed to *The Indian Review*, a year’s subscription (12 sh.) will undoubtedly prove a profitable investment. The *Indian Review* stimulates all. It is that class of publication which appeals equally to all classes of readers. It publishes every month an array of original and striking contributions on affairs and men by competent writers and specialists. Its chief attraction is in the variety and copiousness of its contents. Politics, Economics, Industry, Commerce, Agriculture, Religion, Philosophy, Science, Literature, Biography and Criticism are among its usual features. If you have never seen *The Indian Review* send a postal order to the value of As. 8 (eight annas) or one Shilling for a free specimen copy.

SOME RECENT OPINIONS
ON
THE INDIAN REVIEW

Lord Hardinge of Penhurst.—I have every confidence in its future being as successful and useful as its past.

The Rt. Hon. Ramsay Macdonald.—It has been a very active pioneer in what has been a real value to Indian nationalism.

Lord Olivier.—I congratulate the *Indian Review* on the increasing excellence of the qualities of its contents.

Lord Sinha.—It has been a model magazine throughout. How I wish there were many more of the same kind.

Lord Morley.—I have read it with interest and appreciation.

Mr. Fredic Harrison.—Enterprising *Review* which seems likely to bring Great Britain to our fellow citizens in India more closely together.

Sir Frederick Whyte.—It is well-known not only in India but outside, and has many admirers in England.

Lord Clwyd—Throughout this period the *Review* has maintained, unbroken its high literary standard.

Sir Muhammad Habibullah.—I may claim that I have been a careful reader of the *Review* for the last two decades and I must add my own tribute. . . . to the great usefulness and importance of this journal from every point of view.

Sir Alexander Cardew.—. . . . It is a living force in Indian journalism.

Sir P. C. Ray.—Readers of diverse taste always find in them (the contents) a rich intellectual treat.

Sir Stanley Reed.—The *Review* has stood above rancour and passion. It has been a powerful force in India for reasoned progress.

Mr. W. L. Courtney.—I feel certain that the *Indian Review* fulfils a most useful task, conducted throughout by high motives.

Mr. Arthur Moore.—I read it with unfailing interest and wish we had in India, more such *Reviews*....

F. H. Brown, C.I.E., of the London Times.—In the variety, topicality and freshness of its contents, the *Indian Review* is easily first among Indian monthlies.

single copy As. 8 or One Shilling

Annual subscription 5 or Twelve shillings including postage. Subscriptions can commence from any month but a few copies of back numbers for the current year are also available.

G. A. NATESAM & CO., PUBLISHERS, G. T., MADRAS.